

# **Agreements Manual**

**M22-99**





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## Foreword

This manual is intended to be a resource for guidance in processing various types of agreements between the Washington State Department of Transportation (WSDOT) and one or more of its customers. Processing includes; developing, executing, monitoring, and closing agreements. Several different types of agreements are covered in this manual, all of which are associated, either directly or indirectly, with a transportation improvement. The manual identifies rules, procedures, RCWs, and WACs that apply to agreement administration.

Updating the manual is a continuing process and revisions are issued periodically. Questions, observations, and recommendations are invited. For clarification of the content of the manual, contact the Design Office in the Olympia Service Center.

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Assistant Secretary  
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# 1. General Information

## 1.1 Purpose

This manual has been developed to provide guidance for processing various agreements between WSDOT and its customers. The manual covers several different types of agreements associated with transportation improvements. However, it does not cover the following agreements:

<u>Prefix</u>	<u>Description</u>	<u>Responsibility</u>
Q.....	Purchase Contracts .....	Region
OR.....	Rental of Equipment.....	Region
DP.....	MIS Agreements.....	OSC / WSF
LP.....	Lease Purchase .....	OSC
MINFO.....	Motorist Information Signing.....	OSC
PA.....	Permit Agents.....	OSC
T.....	TRAC Research.....	OSC
0X.....	Miscellaneous.....	OSC
AA.....	Airspace Rental .....	RES
AC.....	Airspace Rental (Capital Facilities) .....	RES
AG.....	Attorney General.....	AAG
CC.....	Real Estate Contracts .....	RES
MA.....	WSF Rental .....	RES
NA.....	90 Day Rental.....	RES
RA.....	Rental of Excess Lands & Buildings .....	RES
RC.....	Rental of Excess Lands & Buildings (Capital Facilities) .....	RES

The agreement process includes developing, executing, monitoring, and closing agreements. This manual identifies rules and procedures, and includes references to RCWs, WACs, instructional letters, and other WSDOT manuals that apply to agreement administration.

This manual includes guidance on the agreement process statewide. Chapter 5 is provided for the insertion of region-specific processes and approval guidelines.

## 1.2 Revisions

The *Agreements Manual* is a dynamic document that will be revised and updated when necessary.

To keep this manual up-to-date, it is vital that the user do the following:

- (1) Incorporate the revisions that are periodically provided; and,
- (2) Participate in the revision process by using the form provided at the front of the manual to report inaccuracies and contribute new material.

### 1.3 References

References specific to an agreement type will be listed under **Support Documentation - References** in each of the chapters. References that are general or apply to more than one agreement type are listed below.

23 CFR 645A	Subpart A, "Utility Relocation, Adjustments, and Reimbursement"
23 CFR 645A	Subpart B, "Accommodation of Utilities"
RCW 8.26	"Relocation Assistance—Real Property Acquisition Policy"
RCW 47.01.101	"Department of Transportation--Secretary--Authority and Duties"
RCW 47.12	"Acquisition and Disposition of State Highway Property"
RCW 47.24.020	"City Streets as Part of State Highways--Jurisdiction, Control of Such Streets"
RCW 47.26	"Development in Urban Areas--Urban Arterials"
RCW 47.28	"Construction and Maintenance of Highways"
RCW 47.32	"Obstructions on Right of Way"
RCW 47.44	"Franchises on State Highways"
Memorandum	E. R. Burch, May 18, 1997, "City Streets as Part of State Highways - Final Report" (April 30, 1997)
Interim Directive	ID 01-01, "Delegation of Authority to Approve and Execute Certain Documents for the Department"
Instructional Letter	IL 4017.00, "Collection of Advance Payments On Reimbursable Agreements With Local Governments"
M 13-02	<i>Chart of Accounts</i>
M 13-03	<i>TRAINS Manual</i>
M 13-##	<i>Accounting Manual (pending)</i>
M 22-31	<i>Plans Preparation Manual</i>
M 22-86	<i>Utilities Accommodation Policy</i>
M 22-87	<i>Utilities Manual</i>

## 1.4 Definitions/Glossary

### ***advance payment***

Payment of that portion of the estimated cost of work (usually 15 percent) required by WSDOT for costs incurred for work performed by WSDOT in the initial stages of the project.

### ***agreement numbering***

Some agreements (Haul Road/Detour, Turnback, etc.) require that a region designator be placed in the agreement number. The following matrix will help determine which designator should be used:

District Number <sup>1</sup>	Region Name	Designator	
1 - Seattle	Northwest	A	1
2 - Wenatchee	North Central	B	2
3 - Tumwater	Olympic	C	3
4 - Vancouver	Southwest	D	4
5 - Yakima	South Central	E	5
6 - Spokane	Eastern	G	6
7 - Seattle Freeway	<sup>2</sup>	A	7

### ***altered or nonstandard form agreement***

Any agreement that is not a preprinted standard form agreement. These agreements require review by the Contracts Unit in OSC and approval as to form by the Attorney General's Office prior to execution by either party.

### ***betterment***

Any upgrade to a utility's facility when it is being relocated that is greater than the replacement needs and is not attributable to highway construction. The improvement is made solely for the benefit of and at the election of the utility.

Exception: Local ordinances requiring minimum capacities, materials, etc., for replacement of existing facilities or new construction.

### ***certification***

A formal release of jurisdiction over a state highway designated to become a part of a local agency road or street network to counties, cities, or towns. The certification process for abandoned state highways is usually the result of legislative changes to

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<sup>1</sup> District Numbers were replaced with region names in 1994.

<sup>2</sup> District 7 was merged with District 1 in 1975. There may still be some agreements with the "7" designator.

route designations or because a section of state highway has been replaced or relocated during construction.

***certification acceptance***

In accordance with the Stewardship Plan, the Federal Highway Administration (FHWA) has delegated the authority to approve design, PS&E, and advertisement for federal aid projects to WSDOT. This does not include HOV and new construction projects on the Interstate, forest highway projects, and public land interests.

***construction***

The actual project construction and related work, including utility relocation or adjustments, incidental to the construction or reconstruction of a highway project. Preliminary engineering or right of way work is usually programmed and authorized as a separate phase of work.

***continuing contract***

A contract for a consultant or contractor to perform specific services at an agreed price for an organization for a specific time period. The time period would normally be for one year or more.

***conveyance***

A legal document supporting a relinquishment or certification, by which WSDOT conveys to a local agency its real property interest in or to the real property.

***detour or haul road agreement***

An agreement with a municipality for state use of a county road or city street to detour traffic or haul materials associated with a highway improvement project. The agreement number prefix is **HD**.

***developer agreement***

An agreement with a developer, usually at the developer's expense, for mitigating improvement work to state highway facilities such as structures, intersections, channelization, or roadway widening. The agreement number prefix is **UC**.

***estimate of cost***

The estimated cost of work to be performed based on the most current information available at the time the agreement is prepared. If the work is being performed by WSDOT contract, the estimate should use the same bid items as shown in the contract.

***indirect cost rate (administrative overhead)***

The percentage rate that is applied to the total cost of work performed to cover costs associated with the administration of the agreement.

Indirect costs are not readily identifiable with one specific task, job, or work order. Such costs may include indirect labor, social security taxes, insurance, stores expense, and general office expenses. Costs of this nature are generally distributed or allocated to the applicable job or work orders, other accounts, and other functions to which they

relate. Distribution and allocation is made on a uniform basis that is reasonable, equitable, and in accordance with generally accepted cost accounting practices.

The rate charged by WSDOT is established by Instructional Letter IL 13-21. The rate is adjusted each year based on the preceding year and is effective from October 1 of the current year through September 30 of the following year. The indirect cost will be applied at the actual rate in effect at the time the work is performed.

***local agency agreement***

An agreement with a local governmental agency for roadway design, engineering studies, construction, maintenance, or other services. The work may be done by the local agency or by WSDOT. The agreement number prefix is **GCA**.

also

An agreement between WSDOT and a local agency used for the allocation of federal aid dollars to the local agency where WSDOT is acting as a steward for the federal dollars. This agreement is managed through Highways and Local Programs and has an agreement number prefix of **LA**.

***nonoperating property***

Waste sites, pit sites, stockpile sites, maintenance sites, and other such lands or easements required or used in support of the construction and/or operation of a public way for transportation purposes and lying outside WSDOT's highway right of way lines.

***operating property***

That real property or interest therein (including easements) acquired, dedicated, reserved, or necessary for the construction, operation, and maintenance of a public way for transportation purposes and lying within WSDOT's highway right of way lines.

***overrun clause***

An amount set up in an agreement to cover unforeseen cost overruns. This amount is usually included in the Overrun Clause of the agreement as 25 percent of the agreement amount. It is only billed if actually expended.

***participation***

To the extent provided by law, funds may be used to reimburse or make payments to others for work performed on projects.

***payable cost***

The dollar amount WSDOT will pay under an agreement for work performed. This amount is entered on the Agreement Edit Information (AEI) form.

***preliminary engineering***

Locating, surveying, preparing plans, specifications, and estimates, and other related preparatory work in advance of construction operations.

***prescriptive easements***

A property right where no legal documentation or recorded easement exists, but a legal right has been acknowledged by an affirmative finding of the Attorney General's Office. This is normally due to a utility being in place prior to the existence of the state highway.

***private lines***

Those facilities that are privately owned, devoted exclusively to private use, and do not directly or indirectly serve the public. When relocation of private facilities located on the owner's land is necessary, the relocation shall be handled as part of the right of way negotiations, using the provisions of 23 CFR 645A as a guide to establish a cost to cure.

***private party agreement***

An agreement with nonpublic entities or individuals, that does not fit into the developer agreement category. These are normally written in agreement format; however, in some instances they may consist of an exchange of letters. The agreement number prefix is **UC**.

***pro-rata share***

The portion of the total project for which a local agency or private party is responsible. In most cases, their share is based on the traffic generated by their streets, roads, or developments against the total and is shown as a percent.

***reciprocating agreement for administrative overhead charges***

An agreement between a local governmental agency and WSDOT where each agree not to charge for overhead costs when performing work or services for the other. The agreement number prefix is **OH**.

***reimbursable cost***

The dollar amount a party will pay WSDOT under an agreement for work performed by WSDOT. This amount is entered on the Agreement Edit Information (AEI) form.

***relinquishment***

The formal release to counties, cities, or towns of that portion of a facility constructed under the responsibility of WSDOT and designated by agreement to become the property of the local agency upon completion of construction.

***relocation***

The adjustment of utility facilities required as a result of a highway project. This includes removing and reinstalling the facilities, acquiring necessary property rights on the new location, moving or rearranging existing facilities, or changing the type of facility, including any necessary safety and protective measures. It shall also mean construction of a replacement facility, functionally equal to the existing facility, where necessary, for continuous operation of the utility service, the project economy, or for staging highway construction.

***removal cost***

The amount necessary to remove a utility's facility, including the cost of demolishing, dismantling, removing, transporting, or otherwise disposing of utility property, and cleanup required to leave the site in a neat and presentable condition.

***salvage credit***

The amount received from the sale of utility property that has been removed or the amount at which the recovered material is charged to the utility's accounts if retained for reuse.

***service agreement***

An agreement with a private or publicly owned utility to provide WSDOT with service such as water, power, sewer, or telephone. The agreement number prefix is an **S** followed by the appropriate regional letter. (See **Agreement Numbering** in **1-4 Definitions/Glossary**)

***standard form agreement***

An agreement prepared using one of the preprinted or electronic standard forms. These forms contain language that complies with applicable state law and WSDOT policy. Any revisions to the forms, either directly or indirectly, will negate the standard form agreement and will require review and approval by the OSC Utilities Section, Contracts Unit, and approval as to form by the Attorney General's Office.

***state generated funds***

Revenues that are collected and dispensed by the state, such as cash receipts and receivables derived from taxes and other sources.

***supplemental agreement***

A method to modify the contents of an existing agreement. This may be needed due to added work, deletion of work, modifications of the terms of an agreement, or costs in excess of the allowable cost of the agreement. The agreement will contain the same number as the existing agreement followed by the word "Supplement" and a subsequent number for each supplement thereafter. Example: GCA 1234, Supplement 1.

***task assignment/task order***

An agreement that is executed with no expenditures to be charged against the agreement. Instead, separate task orders or assignments are executed and monitored individually. The master or parent agreement governs the specifics of the overall agreement and the individual tasks set the scope as to the location for the work to be done, as well as the specific costs.

***transit agreement***

An agreement with a public transit agency or other municipal corporation for the design and/or construction of transit facilities within or adjacent to state highway right of way. These may include park-and-ride or carpool lots, including maintenance and

operation of the facilities, or direct access roadways from a transit facility to a state highway. The agreement number prefix is **GCA**.

***turnback***

A general term including certifications and relinquishments used to describe the conveyance of real property to local agencies. The agreement number prefix is **TB**.

***utility***

All privately, publicly, or cooperatively owned lines, facilities, and systems for producing, transmitting, or distributing communications, cable television, electric power, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, and other similar commodities, including any fire or police signal systems, street lighting systems, and traffic control systems that directly or indirectly serve the public. The agreement number prefix is **UT**.

***work order system***

A procedure for accumulating and recording into separate accounts all costs to an entity in connection with any change in its system or plant.



## **2. Agreements - An Overview**

### **2.1 Definition**

An agreement is a contract between WSDOT and another party that includes an offer and an acceptance. The details of an agreement are included in the agreement document. Agreements are necessary to accomplish the transfer of funds into and out of state accounts for goods and services.

### **2.2 Preparation**

Agreements are legal and binding contracts and care needs to be taken in their preparation and execution. They affect the public, are binding upon the department and the public or another government agency, and often represent significant amounts of money.

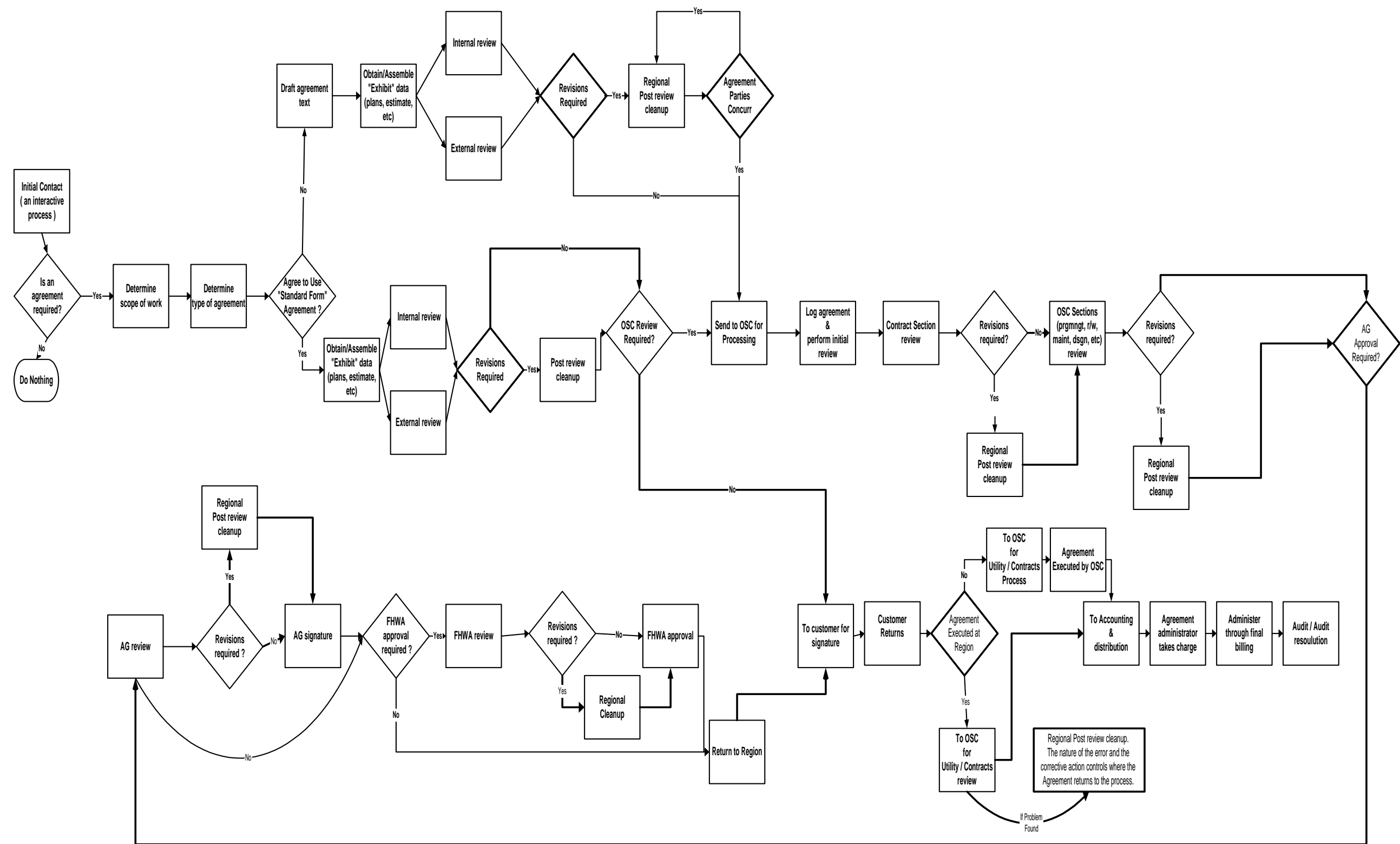
When preparing an agreement, ensure that the wording of the agreement (or contract) is legally sufficient and complies with applicable local ordinances, state law, and federal regulations, and with department policy.

The office preparing the agreement must ensure that the work and/or fund transfer involved in the agreement complies with current policies and law.

Agreements should not be avoided, but rather, planned for. While many agreements are simple and require little time to prepare, execute, and enter into the accounting system, other agreements, due to the complexity of the work or funding sources, take more time.



2.3 Flowchart





## **2.4 Standard Form Agreement vs. Nonstandard Form Agreement**

A standard form agreement is one that has been reviewed and approved by the OSC Design Section, Contracts Unit, and approved as to form by the Attorney General's Office to be used without change. A nonstandard agreement is one that has not been reviewed and approved by the OSC Contracts Unit and approved as to form by the Attorney General's Office and requires OSC Contract Unit and Attorney General approval.

## **2.5 Standard Agreement Form**

An agreement prepared using the preprinted standard form available through WSDOT Stores or the electronic standard form obtained through the department's computer system. These forms contain language that complies with state and federal laws, rules and regulations, and policies. These agreements have been reviewed and approved by the OSC Utilities Section, Contracts Unit, and approved as to form by the Attorney General's Office. Any revisions either directly or indirectly to a Standard Form Agreement make it a nonstandard form agreement.

## **2.6 Nonstandard Form Agreements**

A customized agreement developed to meet the specific needs of a particular project. This includes an altered standard form agreement or an agreement developed using standard provisions provided in this manual. These agreements require review and approval by the OSC Utilities Section, Contracts Unit, and approval as to form by the Attorney General's Office.

## **2.7 Agreements Prepared by Others**

These are agreements from other organizations, both private and governmental, where they are providing a product or service to WSDOT or WSDOT is providing a product or service to them. These agreements are nonstandard agreements and to ensure that they contain sufficient information and appropriate language to meet the requirements of state and federal laws, rules and regulations, and policies, they must be reviewed and approved by the OSC Utilities Section, Contracts Unit, and approved as to form by the Attorney General's Office.

## **2.8 Make up of an Agreement**

An agreement is required to define the roles of the parties to the agreement and spell out their relationships. The agreement identifies the purpose and defines the interaction of the parties and their obligations to each other.

Most of the agreements discussed in this manual have a common structure. The following is a list of the basic sections of an agreement and their purposes. This structure can be used as a guide in developing nonstandard agreements.

### ***Preface***

The preface identifies the parties to the agreement and the date the agreement is effective (usually the execution date). The effective date is added once the last party has signed the agreement.

***Recitals (WHEREAS Statements)***

The recitals state why the agreement is being written.

***Purpose (Now Therefore)***

This section defines what the agreement is intended to accomplish.

***Statement of Obligations (Duties)***

Each party to an agreement has obligations that are specific them, while other obligations are mutual to both or all parties. Generally these are expressed in the agreement under the subheadings Party or Mutual.

***Duration***

This section specifies the time frame of the agreement. This can be a completion date, a length of time for the agreement to run, or a condition to be met before closure of the agreement. The duration section may include multiple conditions.

***Termination***

This is a statement of the conditions under which the parties to the agreement can terminate the agreement. Samples of the conditions are:

- loss of funding,
- specific items to the agreement have not been met (breach of contract),
- by mutual agreement all parties wish to terminate, or
- the end of a time frame.

The termination section includes any notices that will be required to terminate the agreement.

***Completion***

This section defines when the agreement will be complete. The indicator may be a delivered product, a closure date, or some other condition to be met to close the agreement. The documentation stating that this has occurred, such as a letter of acceptance, should also be described in the section.

***Payment***

The Payment section specifies the conditions of payment, the payment method, and the estimated amount to be paid under the agreement. It also includes any special conditions that relate to product delivery, the condition of the product, or measurement of the deliverables.

***Restrictions***

This section covers restrictions placed on the actions of the parties to the agreement and their employees. Examples include restrictions on the use of agreement funds for lobbying, restrictions regarding the hiring of individuals who participated in the agreement negotiations, or other such limitations on the conduct of the parties to the agreement.

### ***Changes***

This section outlines the procedures for making changes to an agreement due to overruns, time extensions, or a phase or scope change. Usually the section calls for the agreement to be supplemented; however, this clause can also be written to cause the agreement to become null and void if there is a change.

### ***Disputes***

If, because of the type of work being done under the agreement, a dispute arises, a clause directing how the dispute will be handled and who will provide final resolution should be incorporated into the agreement. Using a third party to resolve a dispute or forming a disputes review board are options to consider when developing this clause.

### ***Severability (Legal Relations)***

This section defines the impacts to the agreement if portions of the agreement are found to be invalid. The language can be written to allow the agreement to continue to be in effect, to make certain sections invalid, or even to make the total agreement null and void.

### ***Indemnification (Hold Harmless)***

This section defines the legal protection for each of the parties and their respective employees, officers, agents, etc., with regard to individual or corporate negligence that may be cause for legal action to be brought against all parties to the agreement. The responsibility for the negligent act that caused the litigation is placed solely on the party that was responsible for the negligent act.

### ***Work By Contract***

This section is written to allow or to disallow the use of a subconsultant or another contractor to do the work proposed by the agreement.

### ***Audit Clause***

The records retention and audit section sets requirements for the length of time records are stored following completion of the work done under the agreement. This section also details when an audit can be called for and by whom.

### ***Signatures***

This section will have a signature block for the approving authority of each party to the agreement. If the agreement is a nonstandard form agreement or a standard form agreement that has been modified, it should also contain an assistant attorney general's signature block for approved as to form.

### ***Exhibits***

- Scope of Work
- Cost Estimates
- Required Certifications



## 3. Agreement Types

### 3.1 Guide to Agreement Selection

The following is a guide to help determine whether an agreement is required and if so, identify which type of agreement is appropriate:

- ◆ **PRIVATE PARTY OR COMPANY** (utility company, consulting firm, developer, railroad, private party/individual)
  - **Provide goods or services to WSDOT**
    - Activities requested by WSDOT through a letter of authorization to be accomplished by a private party.  
**Dx - Regional Delegated Authority (Section 3-2.1)**
    - Consultant provided services such as planning or preliminary engineering studies, the development of PS&E, education/training of employees, etc.  
**OY - Personal Services (Section 3-17)**
    - A developer or property owner requesting that work be done by their contractor within the highway right of way.  
**UC - Private Sector (Section 3-14)**
    - Railroad crossing construction (signal devices, highway widening, crossing enhancement).  
**RR - Railroad (Section 3-10)**
    - Rental of building or land to WSDOT.  
**OP - Rental of Building or Land (Section 3-16)**
    - Title insurance required for the purchase of right of way needed for construction.  
**SF - Title Insurance (Section 3-11)**
    - Utilities (water, electric, phone, etc.) provided for use on a highway construction project that are required either during or after completion of the project.  
**Sx - Utility Services (Section 3-12)**
  - **Require goods or services from WSDOT**
    - Developer or property owner requesting that work be done by WSDOT within the highway right of way.  
**UC - Private Sector (Section 3-14)**
    - Written authorization for WSDOT to perform work or expend funds.  
**Jx - Reimbursable (Section 3-2.2)**

- Utility relocation due to construction of a WSDOT project.

**UT - Utility (Section 3-15)**

◆ **GOVERNMENTAL AGENCY** (city/town, county, state, federal, port, municipality, etc.)

- **Provide goods or services to WSDOT**

- Activities requested by WSDOT through a letter of authorization that are to be accomplished by a local agency.

**Dx - Regional Delegated Authority (Section 3-2.1)**

- Activities requested by WSDOT that are to be accomplished by a local agency.

**GCA - State Participating (Section 3-4)**

- Detour route or haul road required during the construction of a highway project.

**HRD - Haul Road/Detour (Section 3-6)**

- Fire protection provided for WSDOT facilities by a local fire department or district.

**FP - Fire Protection (Section 3-3)**

- Receipt of developer mitigation moneys from local agencies for use on highway construction projects.

**LM - Local Mitigation (Section 3-8)**

- Maintenance activities provided by a local agency either as a mutual benefit or at a cost to WSDOT.

**GM - Maintenance (Section 3-5)**

- **Require goods or services from WSDOT**

- Activities performed for a local agency by WSDOT either at the request of the agency or as required by law.

**GCA - Local Agency Participating (Section 3-4)**

- Federal aid pass through to a local agency.

**LA - Local Agency (Section 3-7)**

- Maintenance activities provided for a local agency by WSDOT either as a mutual benefit or at a cost to the local agency.

**GM - Maintenance (Section 3-5)**

- Reciprocal agreement to waive indirect or administrative overhead charges.

**OH - Overhead Reciprocal (Section 3-9)**

- Written authorization for WSDOT to perform work or expend funds for a private party or local agency.

**Jx - Reimbursable (Section 3-2.2)**

- Written authorization for WSDOT to perform work or expend funds for another state agency.

**Nx - Reimbursable (Section 3-2.3)**

- Relinquishment or turnback of right of way.

**TB - Turnback (Section 3-13)**



## 3.2 Region-Level Agreements

### 3.2.1 Dx - Payable Agreement

#### **Description**

A Dx agreement is a Regional Delegated Authority Agreement. It is any agreement the Regional Administrator is authorized to execute that does not fall into any other category..

#### **When Used**

Dx agreements are used in accordance with the *Purchasing Manual* (M 72-80); Directive D 51-30 - “Contracts for Highway Maintenance and Construction Activities Administered by District Maintenance Directive”; and Directive D 5903 - “Contracts for Capital Plant Projects over \$6000 through \$50,000.” No federal funds should be involved with this type of agreement.

#### **Why Used**

Dx agreements allow the region to respond to needs in various functional areas depending on circumstances.

#### **Agreement Check List**

Regional responsibility.

#### **Standard Form Agreement**

None

#### **Support Documentation**

Regional responsibility

#### **Management**

##### ***Executed by:***

Regional Administrator

##### ***Agreement Closure***

The manager who sets up/initiates the agreement submits closure to the regional Accounting Office.

##### ***Audit of Agreement***

No audit is required due to the dollar amount (less than \$100,000) for this type of payable agreement. However, an audit may be requested at any time, for any reason, by anyone.

***Supplementing Agreement***

Regions have the responsibility for developing and implementing a process for supplementing this type of agreement.

### **3.2.2 Jx - Reimbursable Agreement - Non-State Agency or Private Sector**

#### **Description**

A reimbursable agreement executed at region level for work performed by the region at the expense of a local agency or private party/company.

#### **When Used**

Normally this agreement is used for the review and/or inspection of work performed on highway right of way by a local agency or developer. It is also used to provide for department equipment and forces to perform work off the state highway system that a local agency does not have the equipment or expertise to accomplish.

#### **Why Used**

Review and inspection are required to ensure that the work proposed and ultimately installed on state highway right of way meets our current design standards and is installed according to plan.

The agreement gives the department the ability to bill the local agency or private party for the review and inspection.

#### **Agreement Check List**

#### **Standard Form Agreement**

Application for Permit or Franchise (224-696EF) **This form should only be used for work being conducted in relation with a utility permit or franchise.**

#### **Support Documentation**

#### **Management**

##### ***Executed by:***

Regional Administrator

##### ***Agreement Closure***

##### ***Audit of Agreement***

No audit required.

##### ***Supplementing Agreement***

### **3.2.3 Nx - Reimbursable Agreement - State Agency Only**

#### **Description**

A reimbursable agreement executed at region level for work being performed by the region at the expense of another state agency.

#### **When Used**

To allow work to be performed at the request of another state agency. This type of agreement can be for the use of department forces or equipment for emergent work, seasonal work such as snow removal, etc.

#### **Why Used**

#### **Agreement Check List**

#### **Standard Form Agreement**

None

#### **Support Documentation**

#### **Management**

##### ***Executed by:***

Regional Administrator

##### ***Agreement Closure***

##### ***Audit of Agreement***

No audit is required.

##### ***Supplementing Agreement***



### 3.3 FP - Fire Protection

#### **Description**

An FP agreement is used to provide fire protection for WSDOT buildings, structures, or equipment. These agreements are written and maintained for the department by Real Estate Services.

#### **When Used**

FP agreements are entered into with local fire districts for fire protection services and for the protection and safety of personnel and property within and adjacent to the geographical area of the fire district.

#### **Why Used**

The department does not normally maintain fire protection services of its own. Because WSDOT does not pay taxes to fund these services, but does have a need for the protection of department-owned buildings and equipment, it is necessary to contract for local fire protection services.

#### **Standard Form Agreement**

Standard agreement format accompanies Directive (D 59-21). See sample agreements at the end of this chapter.

#### **Support Documentation**

##### ***References***

- Directive D 59-21 Provisions of Fire Protection for Department Property
- RCW 35.21.775 Provision of Fire Protection Services to State- Owned Facilities
- RCW 35.21.779 Mandatory Fire Protection Contract Negotiation
- RCW 39.34.080 Authorization for Individual Agencies to Enter into Mutual Service Contracts
- RCW 52.30.020 Fire Protection Services with County Fire Protection Districts
- RCW 84.40.175 Valuation of Exempt Publicly-Owned Property

#### **Management**

##### ***Executed by:***

- Assistant Secretary for Washington State Ferries (D 59-21, II.D);
- Assistant Secretary for Aviation (D 59-21, II.D); and
- Regional Administrators (D 59-21, II.D).

##### ***Agreement Closure***

There is a two year agreement period ending June 30 or there may be multiple two-year periods ending June 30. For new building acquisitions, the agreement

provides for service to be from the date of negotiation until the end of the current biennium. Closure is not required unless the facility is disposed of or the agreement is renegotiated.

***Audit of Agreement***

No audit is required unless the agreement is greater than \$100,000; however, an audit may be requested at any time.

***Supplementing Agreement***

## Sample Fire Protection Agreement with Fire Department (City or Town)

### Fire Protection Contract

This agreement is made between the Washington State Department of Transportation (WSDOT) and \_\_\_\_\_ Fire Department (Department).

WHEREAS, the Department is organized and equipped to provide fire protection services within and in the vicinity of its boundaries, and the WSDOT desires that the Department provide such services to its property located within those boundaries, NOW THEREFORE,

Beginning on the date of approval by both parties hereto, the Department shall provide fire protection services to property owned by the WSDOT lying within the boundaries of the Department, being located at \_\_\_\_\_, and being hereby certified to measure \_\_\_\_\_ square feet of gross floor space.

In consideration for receiving fire protection services, the WSDOT shall pay to the Department at the rate of \_\_\_\_\_ cents per square foot of gross floor space, the amount of \_\_\_\_\_ for the period beginning with the date of approval of this agreement until the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_. The Department will bill the WSDOT any amounts due under this agreement at the same time that it bills other property owners within those boundaries for its services.

This agreement shall be in effect for the period \_\_\_\_\_ through \_\_\_\_\_. Either the WSDOT or the Department may cancel this contract upon giving 30 days written notice of intent to cancel. This agreement may be renewed for \_\_\_\_\_ years at a rate to be negotiated.

This agreement is made pursuant to [RCW 39.34.080](#). The WSDOT and the Department shall each perform all services and carry out all responsibilities under the terms of this agreement as independent agencies and neither shall by virtue of this agreement be considered an agent or an agency of the other.

It is mutually understood and agreed that no alteration or variation of the terms of this agreement shall be valid unless made in writing and signed by the parties.

\_\_\_\_\_  
**Fire  
Department**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Federal Tax I.D. No.  
\_\_\_\_\_

**State of Washington  
Department of Transportation**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Approved as to Form:**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Assistant Attorney General

## Sample Fire Protection Agreement with County Fire District

### Fire Protection Contract

This agreement is made between the Washington State Department of Transportation (WSDOT) and \_\_\_\_\_ County Fire Protection District No \_\_\_\_\_ (District).

WHEREAS, the District is organized and equipped to provide fire protection services within and in the vicinity of its boundaries, and the WSDOT desires that the District provide such services to its property located within those boundaries, NOW THEREFORE,

Beginning on the date of approval by both parties hereto, the District shall provide fire protection services to property owned by the WSDOT lying within the boundaries of the District, being located at \_\_\_\_\_, and being hereby certified to measure \_\_\_\_\_ square feet of gross floor space.

In consideration for receiving fire protection services, the WSDOT shall pay to the District at the rate of \_\_\_\_\_ cents per square foot of gross floor space, the amount of \_\_\_\_\_ for the period beginning with the date of approval of this agreement until the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_. The District will bill the WSDOT any amounts due under this agreement at the same time that it bills other property owners within those boundaries for its services.

This agreement shall be in effect for the period \_\_\_\_\_ through \_\_\_\_\_. Either the WSDOT or the District may cancel this contract upon giving 30 days written notice of intent to cancel. This agreement may be renewed for \_\_\_\_\_ years at a rate to be negotiated.

This agreement is made pursuant to [RCW 39.34.080](#). The WSDOT and the District shall each perform all services and carry out all responsibilities under the terms of this agreement as independent agencies and neither shall by virtue of this agreement be considered an agent or an agency of the other.

It is mutually understood and agreed that no alteration or variation of the terms of this agreement shall be valid unless made in writing and signed by the parties.

\_\_\_\_\_ County

**Fire Protection District No** \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Federal Tax I.D. No.

\_\_\_\_\_

**State of Washington**

**Department of Transportation**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Approved as to Form:**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Assistant Attorney General

### 3.4 GCA (GC) - Government Contracts

#### **Description**

GCA (GC) agreements are entered into with various governmental agencies for participation in design studies, planning, development of plans, acquisition of right of way, and construction of projects related to highways and the transportation system. Either WSDOT or the participating agency can be the lead for performing the work described in the agreement.

#### **Who**

Cities, counties, other state agencies, ports, transit agencies, Indian Nations (Tribes), and federal agencies, such as, Forest Service, BIA, FHWA, etc.

#### **When Used**

This agreement is used any time funds or other items of value are exchanged between WSDOT and another entity for preliminary engineering, design, construction, mitigation, various studies, or a combination of these items performed by either entity.

The work may require participation by the local agency or WSDOT, due to state law, local ordinance, etc., or the work may be at the request of either entity due to the benefit derived.

#### **Why Used**

The agreement outlines the work to be done, how much it will cost, how the work will be paid for, the responsibilities of each of the participants, and the legal indemnification.

#### **Agreement Check List**

On the following pages are check lists for reimbursable and payable agreements. The differences between them are:

**Reimbursable** - An agreement that provides for a local agency to participate with WSDOT where WSDOT is an agent acting for and on behalf of the local agency. Work is provided by WSDOT and is at local agency expense.

**Payable** - An agreement that provides for WSDOT to participate with a local agency where the local agency is an agent acting for and on behalf of the department. Work is provided by the local agency at WSDOT expense.

## **Reimbursable**

### **Communication & Negotiation**

#### **Region**

Early in project development, the need for local agency involvement should be identified. In most cases, the local agency will make the initial contact to request that WSDOT provide services or to communicate their desire to work in partnership. However, there are instances where WSDOT will approach a local agency because state laws place certain responsibilities on the local agency.

- **Illumination - PE & CN**

Cities and towns are responsible for the installation, maintenance, and operation of illumination systems within their corporate limits (RCW 47.24.020). It is necessary to ask the local agency if they wish to have and pay for an illumination system installed on a WSDOT project located within their jurisdiction. If the agency does not wish to include illumination, then WSDOT will not include the work, even though a system is warranted according to WSDOT design standards.

- **Intersection improvement or signal system - PE, RW, & CN**

#### **City or Town**

Signal systems outside of limited access and within corporate limits of cities or towns are the responsibility of those local agencies whose population exceeds the limits specified under RCW 47.24.020. If a signal system is warranted within the corporate limits of a city or town whose population is less than that specified, the cost of the installation will be borne totally by WSDOT. However, this does not preclude the local agency from willingly participating in the installation.

#### **County**

Whenever, because of increased traffic, heavy turning movements, accident frequency, or other good cause, it becomes necessary to initiate a project for the improvement of an existing intersection not incidental to a construction project, the state and county will cooperate in the cost of the improvement. The state and the county shall mutually agree to a pro-rata share of the cost of the intersection improvement, including channelization and signalization, in accordance with the following formula:

- Ascertain the number of legs of the intersection under the existing responsibility of each agency involved.
- Ascertain the traffic volume on each leg.
- Add the traffic counts on each agency's legs of the intersection.

- The resulting percentage of the traffic volume total falling to each jurisdiction should be the relative proportion of the improvement's cost to be borne by each agency; provided, that in no case shall the county's share of the total cost of the improvement exceed fifty percent of that cost.

If illumination is part of the improvement, ensure that the design of the system splits the service for the county's legs of the intersection for those luminaries on county right of way.

Early coordination with the county is a must. The costs to the county can be anywhere from under 10 percent to over 30 percent of the total cost of the intersection improvement.

Normally, when the estimate is set up in the PS&E and there is no other work except the intersection improvement, the funding will be for a percent of the total cost of the project. If, however, the intersection improvement is a portion of a roadway project such as resurfacing or safety improvements, a separate group will need to be set up for that intersection and the costs to the county will only be for work performed under that group. The work will be at the pro-rata share assigned in the agreement (WAC 468-18-040).

### **Studies**

Studies are usually a mutual benefit. They may be planned far in advance with joint involvement or a local agency may wish to become involved in an in-progress WSDOT study effort. The local agency may request to have the study extended to include areas under their jurisdiction for which they have received a grant or other funding. In some cases this will also require WSDOT to supplement a consultant agreement (0Y).

### **Construction**

When a local agency receives a request from a developer/resident to make improvements in front of their business/home, such as curb, gutter, and sidewalk, the local agency will normally be responsible for this type of improvement if it is outside WSDOT design standards for that section of roadway.

This type of request would ideally occur during PS&E development. However, in most cases the request comes during the construction phase. This imposes another set of requirements as set forth in the change order process. Keep in mind that the work cannot begin until an agreement has been executed, the change order has been signed, and a group has been set up on the contract.

## Agreement Preparation

### ☐ Region Responsibility

- ☐ Prepare the appropriate preprinted or electronic standard form agreement.

Local Agency Participating Agreement - Work by State - Actual Cost  
(224-065EF) See example at the end of this chapter.

### Or

- ☐ Prepare a nonstandard agreement

- ☐ Use the format shown in this chapter.

The use of a nonstandard agreement format requires the submittal of the agreement package to the OSC Utilities Engineer for review by the OSC Contracts Unit and approval as to form by an assistant attorney general assigned to the Department of Transportation.

- ☐ The following information is required when preparing either type of agreement:
  - ☐ Complete the required information on page one of the standard form agreement or include it as part of the body of the nonstandard agreement:
    - ☐ Local agency name and address
    - ☐ SR number
    - ☐ Section of highway - use construction title
    - ☐ Description of Work - actual work being performed under the agreement. List any exhibits used other than exhibits A or B.
    - ☐ Control Section (*standard form agreement only*)
    - ☐ Region (*standard form agreement only*)
    - ☐ Agreement Number

The agreement number is obtained by contacting the OSC Accounting Section and providing most of the information listed above.

- ☐ Prepare Exhibits
  - ☐ Exhibit A: Estimate (See Appendix)
    - ☐ Determine if an Overhead Reciprocal Agreement exists (See section 3-9)
  - ☐ Exhibit B: Plan sheets or other documents



☐ Exhibit C:

- Calculations of the traffic percentages used for the pro-rata share of the county's participation in an intersection improvement project.
- Memorandum of Understanding or Letter of Understanding (MOU or LOU).
- Consultant information.
- Any other pertinent information needed in the agreement.

☐ Other agreement format.

There are agencies that request and/or require the use of their own agreement forms or formats. In these cases, we will usually honor the request, as long as the indemnification clause provides protection for the department and the agreement format provides all the needed information (cost, scope, etc.). These agreements will require the same review and approval that apply to the nonstandard form agreements shown above.

☐ Submit standard form agreement to the local agency for signature.

☐ Transmittal letter

☐ Two originals with blue manuscript backing

↓ Go to EXECUTION

Or

☐ Submit a draft of the nonstandard agreement to the local agency for final review.

If the agreement requires OSC approval, the local agency's final comments are required before the agreement package is submitted to OSC. Any outstanding issues or questions shall be cleared up at this time.

☐ Transmit nonstandard agreement to OSC for review and approval. Include the following:

☐ Memorandum

☐ Transmittal Check List. See Appendix, Figure 1.

☐ Agreement Edit Information Form (130-005EF). See Appendix, Figure 2. Who the Agreement Manager is will depend on how each region delegates agreement responsibility.

☐ Send 6 copies (7 if Interstate) of the agreement with blue manuscript backing.

The originals will be returned following approval as to form.

☐ **OSC - Utilities Section**

- ☐ Distribute the agreement for review to the Contracts Unit or other expertise as necessary.
- ☐ Review exhibits to ensure:
  - Completeness, and
  - That nothing in the exhibits contradicts the body of the agreement.
- ☐ Return comments and/or approval to the Regional Administrator.

☐ **Region**

- ☐ Address comments, if any, and resubmit to the OSC Utilities Section for assistant attorney general (AAG) approval.

**Or**

- ☐ Submit nonstandard agreements to the local agency for signature, with the following:
  - ☐ Transmittal letter
  - ☐ Two originals with blue manuscript backing

☐ **Execution**

The department executes the agreement prior to advertising for construction of the project or before work begins on any item within the scope of the agreement.

☐ **Region**

- ☐ Following its return from the local agency, execute the agreement on behalf of WSDOT.
- ☐ Return the following documents to the local agency:
  - ☐ Duplicate of the original agreement
  - ☐ Transmittal letter
- ☐ Provide a copy of the agreement for the region file
- ☐ Submit the agreement package to the OSC Utilities Section with the following:
  - ☐ Memorandum.
  - ☐ WSDOT's original agreement with blue manuscript backing.
  - ☐ For a standard form agreement, include the following:
    - Transmittal Check List. See Appendix, Figure 1.
    - Agreement Edit Information Form (130-005EF). See Appendix, Figure 2.

## **Payable**

### ☐ **Approval**

Approval for a local agency to provide services is required prior to an agreement being prepared. Normally, the department has funds programmed to do the work. The local agency usually steps up because they are doing similar work in the area and WSDOT will ultimately impact or damage their improvement when we do our project.

**Warning!** - Under no circumstances should any utility relocation work be addressed using a participation agreement format. Go to 3-15 UT - Utility Agreements.

### ☐ **Region**

#### ☐ **Program Management**

- ☐ Ensure that funds are available to do the work and either add dollars or move funding to the required time frame for local agency use.

#### ☐ **Project Development**

- ☐ Some of the following approvals may need to be acquired before the local agency begins work:
  - ☐ Design
    - Channelization
    - Hydraulics
    - Pavement section

### ☐ **Agreement Preparation**

#### ☐ **Region**

- ☐ Prepare the appropriate standard form agreement.
  - ☐ State Participating Agreement - Work by Local Agency - Actual Cost (224-067EF). See example at the end of this chapter.

**Or**

- ☐ Prepare a nonstandard agreement
  - ☐ Use the format shown in this chapter.

The use of a nonstandard agreement format requires submittal of the agreement package to the OSC Utilities Engineer for review by the OSC Contracts Unit and approval as to form by an assistant attorney general.

When preparing either type of agreement, the following information is required in the agreement:

- ☐ Complete the required information on page one of the standard form agreement or include it as part of the body of the nonstandard agreement:

- ☐ Local agency name and address
- ☐ SR number
- ☐ Section of highway - using local agency project title
- ☐ Description of work - actual work being performed under the agreement
- ☐ Control Section (*standard form agreement only*)
- ☐ Region (*standard form agreement only*)
- ☐ Agreement Number - **GCA** then a four digit number

The agreement number is obtained by contacting the OSC Accounting Section and providing most of the information listed above.

- ☐ Prepare Exhibits
  - ☐ Exhibit A: Estimate
    - ☐ Determine if an Overhead Reciprocal Agreement exists (See Section 3-9)
  - ☐ Exhibit B: Plan sheets or other documents

**Or**

- ☐ Prepare another nonstandard agreement format presented from the local agency for our approval.
- ☐ Submit the standard form agreement to the local agency for signature with the following:
  - ☐ Transmittal letter
  - ☐ Two originals

↓ Go to EXECUTION.

**Or**

- ☐ Submit a draft of the nonstandard agreement to the local agency for final review.

If the agreement requires OSC approval, obtain the local agency's final comments before the agreement package is submitted to OSC. Any outstanding issues or questions should be cleared up at this time.

- ☐ Transmit nonstandard agreement to OSC for review and approval. Include the following:
  - ☐ Memorandum

- ☐ Transmittal Check List. See Appendix, Figure 1.
- ☐ Agreement Edit Information Form (130-005EF). See Appendix, Figure 2. Who the Agreement Manager is will depend on how each region delegates agreement responsibility.
- ☐ Send 6 copies (7 if Interstate) of the agreement with blue manuscript backing.

The originals will be returned following approval as to form.

#### ☐ **OSC - Utilities Section**

- ☐ Distribute the agreement for review to the OSC Contracts Unit or other expertise as necessary.
- ☐ Review exhibits to ensure:
  - Completeness, and
  - That nothing in the exhibits contradicts the body of the agreement.

- ☐ Return comments and/or approval to the Regional Administrator.

#### ☐ **Region**

- ☐ Address comments, if any, and resubmit to the OSC Utilities Section for assistant attorney general (AAG) approval.

### **Execution**

The department executes the agreement prior to the local agency advertising for construction or before any other work can begin.

#### ☐ **Region**

- ☐ Following its return from the local agency, execute the agreement on behalf of WSDOT if appropriate to do so.
- ☐ Return the following documents to the local agency:
  - ☐ Duplicate of the original agreement
  - ☐ Transmittal letter, including authorization to advertise or to proceed with work
- ☐ Provide a copy of the agreement for the region file
- ☐ Submit the agreement package to the OSC Utilities Section, including:
  - ☐ Transmittal memorandum
  - ☐ WSDOT's original agreement with blue manuscript backing
  - ☐ For a standard form agreement, include the following:
    - Transmittal Check List. See Appendix, Figure 1.

- Agreement Edit Information Form (130-005EF). See Appendix, Figure 2

### **Standard Form Agreement**

The following standard agreement forms are available as a FileMaker Pro file (LocalAgencyParticipatingAgreements.fp3) or preprinted through WSDOT Stores:

- Local Agency Participating Agreement - Work by State - Actual Cost (224-065EF), and
- State Participating Agreement - Work by Local Agency - Actual Cost (224-067EF)

See the agreement samples at end of this chapter.

The following standard agreement form is available as a FileMaker Pro file (SpecialTransportationPlanningStudyAgreement.fp3):

- Special Transportation Planning Study Agreement - Work by Planning Organization - Actual Cost (224-080EF)

See agreement samples at end of this chapter.

The following standard agreement forms are available in single copies or pads through WSDOT Stores:

- Regular Transportation Planning Organization Agreement (224-092), and
- Metropolitan/Regional Transportation Planning Agreement (224-095)

See Agreement Samples at the end of this Chapter.

### **Nonstandard Agreement Form**

When an agreement does not fit the scope of work or type of payment of a standard form agreement, or either party to the agreement wishes to have additional clauses, then the agreement will need to be written as a nonstandard agreement.

Approval of the nonstandard agreement is outlined in the Agreement Check List section of this chapter.

The following typical format can be used as an example for preparing a nonstandard form agreement for Work by State:

## AGREEMENT GCA \_\_\_\_\_

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between the STATE OF WASHINGTON, Department of Transportation, acting by and through the Secretary of Transportation, hereinafter called the "STATE," and AGENCY, ADDRESS, CITY, STATE, ZIP, hereinafter called the "LOCAL AGENCY";<sup>3</sup>

WHEREAS, the STATE is planning construction or improvements under a project entitled "SR ### - LOCATION - DESCRIPTION," hereinafter called the "PROJECT," and in connection therewith, the LOCAL AGENCY has requested that the STATE perform certain work as herein described, and/or is responsible for a portion of the work as provided for under WAC 468-18-040(5)(d), and

WHEREAS, it is deemed to be in the best interest for the STATE to include the necessary items of work in the STATE's PROJECT, and

WHEREAS, the LOCAL AGENCY is obligated for the cost of work described herein.

NOW, THEREFORE, by virtue of RCW 47.28.140 and in consideration of the terms, conditions, covenants, and performance contained herein, or attached and incorporated and made a part hereof, IT IS MUTUALLY AGREED AS FOLLOWS:

### I GENERAL

The STATE, as agent acting for and on behalf of LOCAL AGENCY, agrees to perform the required work.

Plans, specifications and cost estimates shall be prepared by the STATE in accordance with the current State of Washington Standard Specifications for Road, Bridge, and Municipal Construction and adopted design standards, unless otherwise noted. The STATE will incorporate the plans and specifications into the PROJECT and thereafter advertise the resulting project for bid and assuming bids are received and a contract is awarded, administer the contract

The LOCAL AGENCY hereby approves the plans and specifications for the work as shown on Exhibit "B," attached hereto and by this reference made a part of this AGREEMENT.

The LOCAL AGENCY may, if it desires, furnish an inspector on the PROJECT. Any costs for such inspection will be borne solely by the LOCAL AGENCY. All contact between said inspector and the STATE's contractor shall be through the STATE's representative.

The LOCAL AGENCY agrees, upon satisfactory completion of the work involved, to deliver a letter of acceptance which shall include a release and waiver of all future claims or demands of any nature resulting from the performance of the work under this AGREEMENT.

If a letter of acceptance is not received by the STATE within 90 days following completion of the work, the work will be considered accepted by the LOCAL AGENCY and shall release the STATE from all future claims and demands of any nature resulting from the performance of the work under this AGREEMENT.

The LOCAL AGENCY may withhold this acceptance of work by submitting written notification to the STATE within the 90-day period. This notification shall include the reasons for withholding the acceptance.

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<sup>3</sup> Insert CITY or TOWN or COUNTY in place of LOCAL AGENCY throughout the agreement.

## **II PAYMENT**

The LOCAL AGENCY in consideration of the faithful performance of the work to be done by the STATE, agrees to reimburse the STATE for the actual direct and related indirect cost of the work.

An itemized estimate of cost for work to be performed by the STATE at the LOCAL AGENCY's expense is marked Exhibit "A," and is attached hereto and by this reference made a part of this AGREEMENT.

Partial payments shall be made by the LOCAL AGENCY, upon request to the STATE, to cover costs incurred. These payments are not to be more frequent than one (1) per month. It is agreed that any such partial payment will not constitute agreement as to the appropriateness of any item and that, at the time of final audit, all required adjustments will be made and reflected in a final payment.

The LOCAL AGENCY agrees to make payment for the work to be done by the STATE within thirty (30) days from receipt of billing from the STATE.

The LOCAL AGENCY agrees that if payment for the work is not made to the STATE within ninety (90) days after receipt of the billing, the STATE may withhold any tax moneys which the LOCAL AGENCY is entitled to receive from the Motor Vehicle Fund until payment for the work is received by the STATE.

The LOCAL AGENCY agrees to pay the STATE an advanced payment amount of \$00,000.00<sup>4</sup> within 20 days after the STATE submits its first partial payment request to the LOCAL AGENCY. The advance payment represents approximately fifteen (15) percent of the estimate of cost and covers cost incurred by the STATE in the initial stages of the project. The advance payment will be carried throughout the life of the project with final adjustment made in the final payment.

## **III DELETION OF WORK**

In the event the estimate of cost, Exhibit "A," is in excess of \$10,000 and the total actual bid prices for the work covered by this AGREEMENT exceeds the estimate of costs by more than 15 percent, the LOCAL AGENCY shall have the option of directing the STATE to delete all or a portion of the work covered by this AGREEMENT for the STATE's contract. Except, that this provision shall be null and void if the LOCAL AGENCY's portion of the work exceeds 20 percent of the actual total contract bid price, or if the LOCAL AGENCY is responsible for the costs under state law or the Washington Administrative Code WAC 468-18-040(5)(d).

The LOCAL AGENCY shall have five (5) working days from the date of written notification to inform the STATE to delete the work. Should the LOCAL AGENCY exercise its option to delete the work, the LOCAL AGENCY agrees, upon billing by the STATE, to reimburse the STATE for preliminary engineering costs incurred by the STATE to include the work covered by this AGREEMENT in the STATE's contract.

## **IV EXTRA WORK**

In the event unforeseen conditions require an increase in the cost of 25 percent or more from that agreed to on Exhibit "A," this AGREEMENT will be modified by supplement AGREEMENT covering said increase.

In the event it is determined that any change from the description of work contained in the AGREEMENT is required, approval must be secured from the LOCAL AGENCY prior to the beginning of such work. Where the change is substantial, written approval must be secured.

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<sup>4</sup> This figure is based on the TOTAL estimated amount as shown on Exhibit A.



Reimbursement for increased work and/or a substantial change in the description of work shall be limited to costs covered by a written modification, change order or extra work order approved by the LOCAL AGENCY.

**V**  
**RIGHT OF ENTRY**

The LOCAL AGENCY hereby grants and conveys to the STATE the right of entry upon all land which the LOCAL AGENCY has interest, within or adjacent to the right of way to the highway, for the purpose of construction and if necessary, maintaining said improvements.

Upon completion of the work outlined herein, all future operation and maintenance of the LOCAL AGENCY's facilities shall be at the sole cost of the LOCAL AGENCY and without expense to the STATE.

**VI**  
**LEGAL RELATIONS**

No liability shall attach to the STATE or the LOCAL AGENCY by reason of entering into this AGREEMENT except as expressly provided herein.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the day and year first above written.

LOCAL AGENCY<sup>5</sup>

**WASHINGTON STATE**  
**DEPARTMENT OF TRANSPORTATION**

\_\_\_\_\_  
By

\_\_\_\_\_  
By

\_\_\_\_\_  
Title

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Assistant Attorney General

\_\_\_\_\_  
Date

\_\_\_\_\_  
<sup>5</sup> Insert agency name i.e. CHELAN COUNTY or CITY OF WATERVILLE

### 3.4.1 Clauses for Nonstandard Agreement Forms

The following clauses can be used for further development of nonstandard agreements:

The Record Retention & Audit Clause and the Work by Contract clause are for use in a nonstandard agreement - Work by Local Agency.

#### **RECORD RETENTION & AUDIT CLAUSE**

During the progress of the construction and for a period not less than three (3) years from the date of final payment to the STATE, the records and accounts pertaining to the construction of the project and accounting therefore are to be kept available for inspection and audit by the STATE and/or Federal Government and copies of all records, accounts, documents, or other data pertaining to the project will be furnished upon request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claim, or audit finding has been resolved even though such litigation, claim, or audit continues past the 3-year retention period.

#### **WORK BY CONTRACT**

It is acknowledged that the LOCAL AGENCY may not be adequately staffed or equipped to perform all the work required hereby, and that all or part of the same may be done by a contract let by the LOCAL AGENCY. The LOCAL AGENCY agrees that it shall not advertise or solicit bids for contract work until authorized to do so in writing by the STATE. It is further agreed that the LOCAL AGENCY must receive written approval of the bid and contractor from the STATE prior to awarding the contract.

If a valid and continuing contract exists between the LOCAL AGENCY and a contractor, and the LOCAL AGENCY desires to have the work required by this AGREEMENT performed under the subject contract, the LOCAL AGENCY shall provide the STATE with a copy of the contract for the STATE to review and approve. The STATE will indicate its approval by including a statement in Exhibit "A": to this AGREEMENT that the work shall be performed by (name and address of contractor) under a continuing contract approved by the STATE.

Nothing in the approval of such contact or agreement by the STATE will constitute an assignment of the LOCAL AGENCY's rights and/or obligations or otherwise establish direct relations between STATE, LOCAL AGENCY and contractor.

#### **DISPUTES**

In the event that a dispute arises under this AGREEMENT, it shall be resolved as follows:

The Director of \_\_\_\_\_ and the Secretary of Transportation shall each appoint a member to a disputes board, these two members shall select a third member not affiliated with either Agency. The decision made by this board shall be final and binding on the parties to this AGREEMENT.

#### **VENUE**

In the event that any party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action or proceeding shall be brought in a court of competent jurisdiction situated in Thurston County, Washington.

## LEGAL RELATIONS

The LOCAL AGENCY shall indemnify and hold the STATE, and its agents, employees and/or officers harmless from and shall process and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the STATE, its agents, employees and/or officers arising out of, in connection with, or incident to the execution of this AGREEMENT and/or the LOCAL AGENCY's performance or failure to perform any aspect of this AGREEMENT. PROVIDED, however, that if such claims are caused by or result from the concurrent negligence of (a) the LOCAL AGENCY and (b) the STATE, its agents, employees and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the LOCAL AGENCY, and PROVIDED FURTHER, that nothing herein shall require the LOCAL AGENCY to hold harmless or defend the STATE, its agents, employees and/or officers from any claims arising from the sole negligence of the STATE, its agents, employees, and/or officers.

## LEGAL RELATIONS

The LOCAL AGENCY shall comply with all Federal, state, and local laws and ordinances applicable to the work to be done under this AGREEMENT. This contract shall be interpreted and construed in accord with the laws of Washington.

The LOCAL AGENCY shall indemnify and hold the STATE and its officers and employees harmless from and shall process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the LOCAL AGENCY's negligence or breach of any of its obligations under this AGREEMENT; provided that nothing herein shall require the LOCAL AGENCY to indemnify the STATE against and hold harmless the STATE from claims, demands or suits based solely upon the conduct of the STATE, its agents, officers and employees; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the LOCAL AGENCY's agents or employees and (b) the STATE, its agents, officers and employees, this indemnity provisions with respect to (1) claims or suits based upon such negligence (2) the costs to the STATE of defending such claims and suits shall be valid and enforceable only to the extent of the LOCAL AGENCY's negligence or the negligence of the LOCAL AGENCY's agents or employees.

The LOCAL AGENCY's relation to the STATE shall be at all times as an independent contractor.

The LOCAL AGENCY specifically assumes potential liability for actions brought by the LOCAL AGENCY's own employees against the STATE and, solely for the purpose of this indemnification and defense, the LOCAL AGENCY specifically waives any immunity under the state industrial insurance law, Title 51 RCW.

## HOLD HARMLESS

To the maximum extent permitted by law, each party shall defend, indemnify and hold harmless the other parties and their officials and employees from all claims, demands, suits, actions, and liability of any kind whatsoever, which arise out of or are related to the acts or omissions of the indemnifying party and its officials, employees, agents and contractors. The indemnifying party specifically assumes liability for actions brought by its own employees against the other parties and for that purpose the indemnifying party specifically waives, as respects the other parties only, any immunity under the Worker's Compensation Act, RCW Title 51. The indemnifying party recognizes that this waiver was the subject of mutual negotiation and is expressly entered into pursuant to the provisions of RCW 4.24.115, if applicable. In the event either party incurs attorney's fees, costs or other legal expenses to enforce the provisions of this section against the other party, all such fees, costs and expenses shall be recoverable by the prevailing party.

The following clauses can be used with an agreement having three or more parties signing the agreement.

### **INDEMNIFICATION AND HOLD HARMLESS**

The PARTIES agree to the following:

Each of the PARTIES shall protect, defend, indemnify, and save harmless the other PARTIES, their officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgment, and/or awards of damages, arising out of, or in any way resulting from negligent acts or omissions. No PARTY will be required to indemnify, defend, or save harmless the other PARTY if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the PARTY. Where such claims, suits, or actions result from the concurrent negligence of a PARTY or PARTIES, the indemnity provisions provided herein shall be valid and enforceable only to the extent of a PARTY's own negligence. Each of the PARTIES agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each of the PARTIES, by mutual negotiation, hereby waives, with respect to each of the other PARTIES only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event that any of the PARTIES incurs any judgment, award, and/or cost arising therefrom, including attorneys' fees, to enforce the provisions of this Section, all such fees, expenses, and costs shall be recoverable from the responsible PARTY to the extent of that PARTY's culpability.

### **INDEMNIFICATION AND HOLD HARMLESS**

The PARTIES agree to the following:

Each of the PARTIES shall protect, defend, indemnify, and save harmless the other PARTY, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgment, and/or awards of damages, arising out of, or in any way resulting from, each of the PARTY's negligent acts or omissions. No PARTY will be required to indemnify, defend, or save harmless the other PARTY if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the PARTY. Where such claims, suits, or actions result from the concurrent negligence of the PARTIES, the indemnity provisions provided herein shall be valid and enforceable only to the extent of a PARTY's own negligence. Each of the PARTIES agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each of the PARTIES, by mutual negotiation, hereby waives, with respect to each of the other PARTY only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event that any of the PARTIES or combination of PARTIES incurs any judgment, award, and/or cost arising therefrom, including attorneys' fees, to enforce the provisions of this Section, all such fees, expenses, and costs shall be recoverable from the responsible PARTY or combination of PARTIES to the extent of that PARTY's / those PARTIES' culpability.

## **Support Documentation**

### ***References***

- M 72-80                      *Purchasing Manual*
- M 34-01                      *Research Manual*
- Directive D 13-70        “Proposed Agreement Review”

### ***Scope of the Agreement***

A detailed description of work to be performed by each party. If the agreement is for nonconstruction activities, a breakdown of tasks and time is required.

### ***Cost Estimate***

The cost estimate for work done under all agreements needs to be detailed enough to show items being paid for, the cost for each, and the total cost. Additional costs such as construction engineering, sales tax, and overhead will need to be included if applicable.

If you are far enough along in the PS&E process to have the estimate compiled with groups set up for the agreement work separated, this will simplify putting the cost estimate together. See Appendix, Exhibit A.

### ***Maps & Plan Sheets***

A vicinity map (when applicable), any pertinent plan sheets and specifications showing work to be accomplished.

## **Management**

### ***Executed by:***

- Assistant Secretary for Environmental & Engineering (ID01-01, IV.C.21, 23, 24, 29, 34, 37, 39, & 43) with further delegation for certain types of agreements to the State Traffic Engineer, the State Design Engineer, and the Environmental Affairs Manager (3-1-96 Memorandum);
- Assistant Secretary for Planning & Programming (ID01-01, IV.D.1, 3, 5, 6, and 8) with further delegation authorized;
- Assistant Secretary for Highways and Local Programs (ID01-01. E.5.a) with further delegation authorized; and
- Director, Audit Office (ID 01-01, IV.K.4) with further delegation authorized.

### ***Oversight of Work Performed***

There are two types of oversight:

- (1) Inspection of the contractor's work to ensure that the project is being constructed according to plan. This is the responsibility of the agency providing the work under the agreement; and

- (2) Review of the billing, which is the responsibility of the agency paying to have the work done. This oversight is to ensure that the agency doing the work is doing everything they are supposed to do according to the agreement.

In some agreements, a section is added to detail how the work will be monitored, such as having weekly meetings or scheduling periodic field inspections. This type of cooperation and coordination usually begins at the time of initial contact in the agreement process.

For the WSDOT side of the payable agreement, where the oversight or monitoring of the work belongs will depend on the phase of the project and whether it is preliminary engineering, PS&E development, or construction. Each region will determine which office/organization will be responsible for monitoring the work being done.

### ***Agreement Closure***

The Agreement Manager is responsible for timely closure of the agreement following completion of the work being done under that agreement. The closure process is needed to ensure that all work included in the agreement has been done and that any outstanding issues, payments, or billings have been taken care of. A timely closure is also beneficial because the work is still fresh in our memory, the contractor is usually still available to correct any problems, and the work is still new.

When an agreement is not closed in a timely manner, problems can develop that may add costs for the department. The following are further reasons for the agreement manager to make an effort to close the agreement in a timely manner:

- An audit can no longer be performed after three years following completion of work. This may present a problem if the local agency would owe the department following a review.
- Billings to a local agency months AFTER the apparent completion of work may not be paid because those funds that were budgeted for the work and not expended (billed by us) have been moved to another project. If the local agency thinks the work is complete and no more bills arrive, they may assume we are done and reallocate the funds.
- Showing that we are on top of the project will keep us in good standing with the local agency.
  - By closing the agreement, CE charges stop. This assures that CE charges do not drag on and on until we finally complete the final records and ultimately close the work order.
  - The local agency is not surprised with a final billing for work that was apparently completed months or even years before. Again, if they do not receive bills, and assume that the work is complete, the local agency will move the money to another project.

☐ **Standard Form Agreement**

☐ **Work by Local Agency**

- Upon notification of completion of the work being done under the agreement, the office/organization responsible for the agreement will arrange for a review and/or inspection of the work performed.
- If the work is acceptable, provide an acceptance letter to the local agency including a release and waiver of all future claims or demands of any nature resulting from the performance of the work under the agreement.
- If the work is unacceptable, provide written documentation of the reasons for withholding the acceptance. Continue to work with the agency to have the work brought to an acceptable state.
- If the work is acceptable, the following sections need to be made aware of the acceptance and that the agreement is going to be closed:

☐ **OSC**

- Utilities Section
- Accounting

☐ **Region**

- Accounting
- The agreement originator

☐ **Work by State**

- Upon completion of the work being done for the local agency, contact the local agency. Arrange for a review and/or inspection of the completed work.
- Obtain a letter of acceptance or nonacceptance from the local agency. Let them know that if one or the other is not received within 90 days, the work will be considered accepted. The acceptance letter should contain a release and waiver of all future claims or demands of any nature resulting from the performance of the work that was completed under the agreement.
- If the work is acceptable, the following sections need to be made aware of the acceptance and that the agreement is going to be closed:

☐ **OSC**

- Utilities Section
- Accounting

☐ **Region**

- Accounting
- The agreement originator

#### **□ Nonstandard Agreement**

The closure procedure for a nonstandard agreement will depend upon whether the acceptance statements or a rendition of them have been included in the agreement.

Notification by the agreement manager to OSC and the regional Accounting Section should be made as soon as either the acceptance letter has been received or the time has elapsed for the local agency to accept the work.

#### ***Audit of Agreement***

An audit is required on any payable agreement in excess of \$100,000. However, an audit can be requested at any time.

#### ***Supplementing Agreement***

Agreements need to be supplemented for the following reasons:

- If there is a change in the original scope of work; or
- If the amount of the overrun clause is exceeded; or
- Exceeding the agreement amount if there is no overrun clause,.

A supplemental agreement shall include the following items:

- Any change to the original agreement, such as an addition to the scope or an increase in cost, needs to be added to the body of the supplement agreement,; and
- A revised estimate; and
- Plan sheets and specifications of any added work, as needed.

A typical format for a supplemental agreement is shown below:



**SUPPLEMENT AGREEMENT**  
**GCA \_\_\_\_\_ SUPPLEMENT NO. \_\_\_\_\_**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, between the STATE OF WASHINGTON, Department of Transportation, acting by and through the Secretary of Transportation, hereinafter called the "STATE," and AGENCY, ADDRESS, CITY, STATE, ZIP, hereinafter called the "LOCAL AGENCY,"

WHEREAS, the parties hereto entered into AGREEMENT ##### on DATE EXECUTED, which provided for DESCRIPTION OF ORIGINAL AGREEMENT, and

WHEREAS, it is deemed desirable to supplement the original agreement to REASON FOR SUPPLEMENT.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, or attached and incorporated and made a part hereof,

IT IS MUTUALLY AGREED AS FOLLOWS:

1. Section I, General, of the original agreement is revised to include the additional items of work, to be performed by the LOCAL AGENCY at STATE expense, and as described herein:  
(LIST ADDITIONAL DESCRIPTION OF WORK IN SIMILAR FORMAT TO ORIGINAL AGREEMENT)
2. The estimate of Cost, Exhibit "A," in the original agreement is hereby superseded and replaced by Exhibit "A-1," attached hereto and by this reference made a part of this agreement.
3. All other terms and conditions of the original agreement shall remain in full force and effect except as modified by this Supplement Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the day and year first above written.

**LOCAL AGENCY**<sup>7</sup>

\_\_\_\_\_

By

\_\_\_\_\_

Title

\_\_\_\_\_

Date

**WASHINGTON STATE DEPARTMENT  
OF TRANSPORTATION**

\_\_\_\_\_

By

**APPROVED AS TO FORM:**

\_\_\_\_\_

Assistant Attorney General


\_\_\_\_\_

Date

<sup>6</sup> Insert CITY or TOWN or COUNTY in place of LOCAL AGENCY throughout the agreement.

<sup>7</sup> Insert agency name, i.e., CHELAN COUNTY or CITY OF WATERVILLE

- Local Agency Participating Agreement - Work by State - Actual Cost (224-065EF)  
*LocalAgencyParticipatingAgreements.fp3*

 <b>Washington State Department of Transportation</b>		<b>Local Agency Participating Agreement</b> Work by State - Actual Cost	
Agreement Number		Organization and Address	
State Route Number		Section / Location	
Control Section Number		Description of Work	
Region			
Advance Payment Amount			

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between the STATE OF WASHINGTON, Department of Transportation, acting by and through the Secretary of Transportation, (hereinafter the "STATE") and the above named organization, (hereinafter the "LOCAL AGENCY").

WHEREAS, the STATE is planning the construction or improvement of a section of the state route as shown above, and in connection therewith, the LOCAL AGENCY has requested that the STATE perform certain work as herein described, and/or is responsible for a portion of the work as provided for under WAC 468-18-040(5)(d), and

WHEREAS, it is deemed to be in the best interest for the STATE to include the necessary items of work in the STATE's construction contract proposed for the improvement of this section of State Highway, and

WHEREAS, the LOCAL AGENCY is obligated for the cost of work described herein.

NOW THEREFORE, by virtue of RCW 47.28.140 and in consideration of the terms, conditions, covenants, and performances contained herein, or attached and incorporated and made a part hereof, IT IS MUTUALLY AGREED AS FOLLOWS:

**I  
GENERAL**

The STATE, as agent acting for and on behalf of the LOCAL AGENCY, agrees to perform the above "Description of Work".

Plans, specifications and cost estimates shall be prepared by the STATE in accordance with the current State of Washington Standard Specifications for Road, Bridge, and Municipal Construction, and amendments thereto, and adopted design standards, unless otherwise noted. The STATE will incorporate the plans and specifications into the STATE's project and thereafter advertise the resulting project for bid and, assuming bids are received and a contract is awarded, administer the contract.

The LOCAL AGENCY hereby approves the plans and specifications for the described work as shown on Exhibit "B", attached hereto and by this reference made a part of this AGREEMENT.

The LOCAL AGENCY may, if it desires, furnish an inspector on the project. Any costs for such inspection will be borne solely by the LOCAL AGENCY. All contact between said inspector and the STATE's contractor shall be through the STATE's representative.

The LOCAL AGENCY agrees, upon satisfactory completion of the work involved, to deliver a letter of acceptance to the STATE which shall include a release and waiver of all future claims or demands of any nature resulting from the performance of the work under this AGREEMENT.

If a letter of acceptance is not received by the STATE within 90 days following completion of the work, the work will be considered accepted by the LOCAL AGENCY and shall release the STATE from all future claims and demands of any nature resulting from the performance of the work under this AGREEMENT.

The LOCAL AGENCY may withhold this acceptance of work by submitting written notification to the STATE within the 90-day period. This notification shall include the reasons for withholding the acceptance.

**II  
PAYMENT**

The LOCAL AGENCY, in consideration of the faithful performance of the work to be done by the STATE, agrees to reimburse the STATE for the actual direct and related indirect cost of the work.

DOT Form 224-065 EF  
Revised 1/97

An itemized estimate of cost for work to be performed by the STATE at the LOCAL AGENCY's expense is marked Exhibit "A", and is attached hereto and by this reference made a part of this AGREEMENT.

Partial payments shall be made by the LOCAL AGENCY, upon request of the STATE, to cover costs incurred. These payments are not to be more frequent than one (1) per month. It is agreed that any such partial payment will not constitute agreement as to the appropriateness of any item and that, at the time of the final audit, all required adjustments will be made and reflected in a final payment.

The LOCAL AGENCY agrees to make payment for the work to be done by the STATE within thirty (30) days from receipt of billing from the STATE.

The LOCAL AGENCY agrees that if payment for the work is not made within ninety (90) days after receipt of billing the STATE may withhold any tax monies which the LOCAL AGENCY is entitled to receive from the Motor Vehicle Fund until payment for the work is received by the STATE.

The LOCAL AGENCY agrees to pay the STATE the "Advance Payment Amount" stated above within 20 days after the STATE submits its first partial payment request to the LOCAL AGENCY. The advance payment represents approximately fifteen (15) percent of the estimate of cost and covers costs incurred by the STATE in the initial stages of the project. The advance payment will be carried throughout the life of the project with final adjustment made in the final payment.

### **III DELETION OF WORK**

In the event the estimate of cost, EXHIBIT "A", is in excess of \$10,000 and the total actual bid prices for the work covered by this AGREEMENT exceeds the estimate of costs by more than 15 percent, the LOCAL AGENCY shall have the option of directing the STATE to delete all or a portion of the work covered by this AGREEMENT from the STATE's contract. Except, that this provision shall be null and void if the LOCAL AGENCY's portion of the work exceeds 20 percent of the actual total contract bid price, or if the LOCAL AGENCY is responsible for the costs under state law or the Washington Administrative Code WAC 468-18-040(5)(d).

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the day and year first above written.

#### **LOCAL AGENCY**

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

DOT Form 224-065 EF  
Revised 1/97

The LOCAL AGENCY shall have five (5) working days from the date of written notification to inform the STATE to delete the work. Should the LOCAL AGENCY exercise its option to delete the work, the LOCAL AGENCY agrees, upon billing by the STATE, to reimburse the STATE for preliminary engineering costs incurred by the STATE to include the work covered by this AGREEMENT in the STATE's contract.

### **IV EXTRA WORK**

In the event unforeseen conditions require an increase in the cost of 25 percent or more from that agreed to on Exhibit "A", this AGREEMENT will be modified by a supplement AGREEMENT covering said increase.

In the event it is determined that any change from the description of work contained in this AGREEMENT is required, approval must be secured from the LOCAL AGENCY prior to the beginning of such work. Where the change is substantial, written approval must be secured.

Reimbursement for increased work and/or a substantial change in the description of work shall be limited to costs covered by a written modification, change order or extra work order approved by the LOCAL AGENCY.

### **V RIGHT OF ENTRY**

The LOCAL AGENCY hereby grants and conveys to the STATE the right of entry upon all land which the LOCAL AGENCY has interest, within or adjacent to the right of way of the highway, for the purpose of constructing and if necessary, maintaining said improvements.

Upon completion of the work outlined herein, all future operation and maintenance of the LOCAL AGENCY's facilities shall be at the sole cost of the LOCAL AGENCY and without expense to the STATE.

### **VI LEGAL RELATIONS**


No liability shall attach to the STATE or the LOCAL AGENCY by reason of entering into this AGREEMENT except as expressly provided herein.

#### **STATE OF WASHINGTON DEPARTMENT OF TRANSPORTATION**

By \_\_\_\_\_

Title \_\_\_\_\_

- State Participating Agreement - Work by Local Agency - Actual Cost (224-067EF)  
*AgencyParticipatingAgreements.fp3*

 <b>Washington State Department of Transportation</b>	
<b>State Participating Agreement</b>  <b>Work by Local Agency Actual Cost</b>	
Organization and Address	
Section / Location	
Description of Work	
Agreement Number	
State Route Number	Control Section Number
Region	

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between the STATE OF WASHINGTON, Department of Transportation, acting by and through the Secretary of Transportation, (hereinafter the "STATE") and the above named organization, (hereinafter the "LOCAL AGENCY").

WHEREAS, the LOCAL AGENCY is planning the construction of a project as shown above, and in connection therewith, the STATE has requested that the LOCAL AGENCY perform certain work as herein described, and

WHEREAS, it is deemed to be in the best interest for the STATE to include specific items of work in the LOCAL AGENCY's construction contract proposed for the above-noted project, and

WHEREAS, the STATE is obligated for the cost of work described herein.

NOW THEREFORE, by virtue of RCW 47.28.140 and in consideration of the terms, conditions, covenants, and performances contained herein, or attached and incorporated and made a part hereof, IT IS MUTUALLY AGREED AS FOLLOWS:

**I  
GENERAL**

The LOCAL AGENCY, as agent acting for and on behalf of the STATE, agrees to perform the above "Description of Work".

Plans, specifications and cost estimates shall be prepared by the LOCAL AGENCY in accordance with the current State of Washington Standard Specifications for Road, Bridge, and Municipal Construction, and amendments thereto, and adopted design standards, unless otherwise noted. The LOCAL AGENCY will incorporate the plans and specifications into the LOCAL AGENCY's project and thereafter advertise the resulting project for bid and, assuming bids are received and a contract is awarded, administer the contract.

The LOCAL AGENCY agrees to submit plans and specifications for the described work as shown on Exhibit "B", attached hereto and by this reference made a part of this AGREEMENT, to the STATE for approval prior to advertising the project.

The STATE may, if it desires, furnish an inspector on the project. Any costs for such inspection will be borne solely by the STATE. All contact between said inspector and the LOCAL AGENCY's contractor shall be through the LOCAL AGENCY's representative.

DOT Form 224-067 EF  
Revised 1/97

The STATE agrees, upon satisfactory completion of the work involved, to deliver a letter of acceptance which shall include a release and waiver of all future claims or demands of any nature resulting from the performance of the work under this AGREEMENT.

**II  
PAYMENT**

The STATE, in consideration of the faithful performance of the work to be done by the LOCAL AGENCY, agrees to reimburse the LOCAL AGENCY for the actual direct and related indirect cost of the work.

An itemized estimate of cost for work to be performed by the LOCAL AGENCY at the STATE's expense is marked Exhibit "A", and is attached hereto and by this reference made a part of this AGREEMENT.

Partial payments shall be made by the STATE, upon request of the LOCAL AGENCY, to cover costs incurred. These payments are not to be more frequent than one (1) per month. It is agreed that any such partial payment will not constitute agreement as to the appropriateness of any item and that, at the time of the final audit, all required adjustments will be made and reflected in a final payment.

The LOCAL AGENCY agrees to submit a final bill to the STATE within forty-five (45) days after the LOCAL AGENCY has completed the work.

### **III DELETION OF WORK**

In the event the estimate of cost, Exhibit "A", is in excess of \$10,000 and the total actual bid prices for the work covered by this AGREEMENT exceeds the estimate of cost by more than 15 percent, the STATE shall have the option of directing the LOCAL AGENCY to delete all or a portion of the work covered by this AGREEMENT from the LOCAL AGENCY's contract. Except, that this provision shall be null and void if the STATE's portion of the work exceeds 20 percent of the actual total contract bid price.

The STATE shall have five (5) working days from the date of written notification to inform the LOCAL AGENCY to delete the work. Should the STATE exercise its option to delete work, the STATE agrees, upon billing by the LOCAL AGENCY, to reimburse the LOCAL AGENCY for preliminary engineering costs incurred by the LOCAL AGENCY to include the work covered by this AGREEMENT in the LOCAL AGENCY's contract.

### **IV EXTRA WORK**

In the event unforeseen conditions require an increase in the cost of 25 percent or more from that agreed to on Exhibit "A", this AGREEMENT will be modified by supplemental AGREEMENT covering said increase.

In the event it is determined that any change from the description of work contained in this AGREEMENT is required, approval must be secured from the STATE prior to the beginning of such work. Where the change is substantial, written approval must be secured.

Reimbursement for increased work and/or a substantial change in the description of work shall be limited to costs covered by a written modification, change order or extra work order approved by the STATE.

### **V RIGHT OF ENTRY**

The STATE hereby grants and conveys to the LOCAL AGENCY the right of entry upon all land which the STATE has interest, within or adjacent to the right of way of the highway, for the purpose of constructing said improvements.

Upon completion of the work outlined herein, all future operation and maintenance of the STATE's facilities shall be at the sole cost of the STATE and without expense to the LOCAL AGENCY.

### **VI LEGAL RELATIONS**

No liability shall attach to the LOCAL AGENCY or the STATE by reason of entering into this agreement except as expressly provided herein.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the day and year first above written.

**LOCAL AGENCY**

**STATE OF WASHINGTON  
DEPARTMENT OF TRANSPORTATION**

By \_\_\_\_\_

By \_\_\_\_\_


Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

DOT Form 224-067 EF  
Revised 1/97

- Special Transportation Planning Study Agreement - Work by Planning Organization - Actual Cost (224-080EF) *SpecialTransportationPlanningStudyAgreement.fp3*

 <b>Washington State Department of Transportation</b>		Organization and Address
<b>Special Transportation Planning Study Agreement</b> Work by Planning Organization - Actual Cost		
Agreement Number	Total Amount	Project Title and Description
Project Manager	Agreement Expiration	

This AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between the STATE OF WASHINGTON, Department of Transportation, acting by and through the Secretary of Transportation, hereinafter called the "STATE," and the above named organization, hereinafter called the "PLANNING AGENCY."

WHEREAS, the STATE and the PLANNING AGENCY recognize the need for the transportation planning project, described above, and

WHEREAS, it is deemed in the best interest of the STATE to participate in funding said project for the mutual benefit of local and state roadway planning in the area of the project, and

WHEREAS, the STATE and the PLANNING AGENCY now wish to define responsibility for preparation of the transportation planning project.

NOW THEREFORE, it is mutually agreed as follows:

<p style="text-align: center;"><b>I</b> <b>Scope of Work</b></p> <p>The PLANNING AGENCY shall undertake the Transportation Planning Project described above, which shall include the tasks set forth in Exhibit "A," attached hereto.</p> <p style="text-align: center;"><b>II</b> <b>Schedule</b></p> <p>The project period shall commence upon execution of this agreement and shall last until the expiration date listed above.</p> <p style="text-align: center;"><b>III</b> <b>Payment</b></p> <p>The STATE agrees to reimburse the PLANNING AGENCY's actual direct and related indirect costs of the project. The maximum amount that the STATE shall reimburse the PLANNING AGENCY shall not exceed the "Total Amount Authorized" listed above. Payment by task shall be made as set forth in Exhibit "A." All costs must be consistent with the Federal cost principles contained in OMB Circular A-87.</p> <p>The PLANNING AGENCY shall submit to the STATE requests for funds as they are expended on the project, but not to exceed one such request every month. Such requests for reimbursement shall document the amount of funds that have been expended during the period for the total project, as well as for the current billing period. The STATE shall review and approve each request for payment in an expeditious manner and shall make payment within 30 days after approval of the payment request.</p>	<p style="text-align: center;"><b>IV</b> <b>Reports</b></p> <p>The PLANNING AGENCY shall, from time to time during the progress of the work, confer with the STATE. The PLANNING AGENCY shall prepare and present to the STATE an annual progress report. The report shall be completed and submitted to the STATE within 30 calendar days following the end of each fiscal year. The STATE however, reserves the right to request an interim report(s) during the fiscal year. The interim report(s) is due to the STATE within 21 calendar days of being notified in writing by the STATE. The interim report(s) shall include a summary of work progress during the course of the fiscal year, costs incurred in accordance with the approved scope of work and budget, and progress to date, including any problems or work delays. The STATE may delay reimbursement of billings if the requested interim report(s) is not submitted in a timely manner.</p> <p>Within 30 days after the conclusion of each fiscal year, the PLANNING AGENCY shall prepare and submit to the STATE an annual progress report. This annual report shall summarize work accomplished under the scope of work, costs incurred by work element, and shall identify any carryover of funds.</p> <p>A final report documenting the planning project, including interim and task reports which provide documentation of all technical data and their analysis, shall be prepared by the PLANNING AGENCY. The PLANNING AGENCY shall submit five copies of the final report to the STATE for acceptance. This requirement for a final report may be waived in writing by the STATE.</p>
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DOT Form 224-080 EF  
Revised 6/98

**V  
Modifications**

Either party may request changes in these provisions. Such changes which are mutually agreed upon shall be incorporated as written amendments to this Agreement. No variation or alteration of the terms of this Agreement shall be valid unless made in writing and signed by authorized representatives of the parties hereto.

**VI  
Audits, Inspection, and Retention of Records**

All project records in support of all costs incurred and actual expenditures kept by the PLANNING AGENCY are to be maintained in accordance with procedures prescribed by the Division of Municipal Corporations of the State Auditor's Office, the U.S. Department of Transportation, and the STATE.

The STATE, and any of its representatives, shall have full access to and the right to examine, during normal business hours and as often as they deem necessary, all of the PLANNING AGENCY's records with respect to all matters covered by this contract. Such representatives shall be permitted to audit, examine, and make excerpts or transcripts from such records and to make audits of all contracts, invoices, materials, payrolls, and other matters covered by this contract. All documents, papers accounting records, and other material pertaining to costs incurred in connection with the project shall be retained by the PLANNING AGENCY for three years after the STATE's written notice that the project is complete and the Agreement is terminated. Copies thereof shall be furnished if requested.

In accordance with OMB Circular A-128 regulations, the PLANNING AGENCY is required to arrange for audit of funds expended.

**VII  
Termination**

If it is considered in the best interests of the STATE, the STATE may terminate this Agreement upon giving ten (10) days notice in writing to the PLANNING AGENCY. If this Agreement is so terminated prior to fulfillment of the terms stated herein, the PLANNING AGENCY shall be reimbursed only for actual expenses and noncancelable obligations, both direct and indirect, incurred to the date of termination.

**VIII  
Legal Relations**

The PLANNING AGENCY shall comply with all Federal, State and Local Laws and Ordinances applicable to the work to be done under this Agreement.

Each party to this Agreement shall be responsible for damage to persons or property resulting from the negligence on the part of itself, its employees, its agents, or its officers. Neither party assumes any responsibility to the other party for the consequences of any act or omission of any person, firm, or corporation not a party to this Agreement.

**IX  
Subcontracting**

The services of the PLANNING AGENCY are to be directed by the Project Manager identified above. The PLANNING AGENCY shall not assign, sublet, or transfer any of the work provided for under this Agreement without prior written approval from the STATE, and the STATE shall review and approve the PLANNING AGENCY's consultant agreement prior to execution. The PLANNING AGENCY shall comply with all Federal and State laws and regulations governing the selection and employment of consultants. The State reserves the right to appoint a representative to serve on the Consultant Selection Committee. Subcontracts greater than \$10,000 must contain all the required provisions of this contract.

**X  
Travel**

Any out-of-state travel must have prior written approval of the STATE to be eligible for reimbursement. Current STATE travel regulations and rates shall apply to all in-state and out-of-state travel for which reimbursement is claimed during the term of this Agreement.

**XI  
Liability**

No liability shall attach to the STATE or the PLANNING AGENCY by reason of entering into this Agreement except as expressly provided herein.

**XII  
Independent Contractor**

The PLANNING AGENCY shall be deemed an independent contractor for all purposes and the employees of the PLANNING AGENCY or any of its contractors, subcontractors, and the employees thereof, shall not in any manner be deemed to be employees of the STATE.

**XIII  
Equal Employment Opportunity**

The PLANNING AGENCY agrees to abide by all State and Federal regulations with respect to employment. This includes, but is not limited to, equal opportunity employment, nondiscrimination assurances, project record keeping, audits, inspection, and retention of records and will adhere to all of the nondiscrimination provisions set forth in Exhibit "C" attached hereto.

**XIV  
Severability**

If any covenant or provision in this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid, if such remainder would then continue to conform to the terms and requirements of applicable law and the intent of this contract.

**XV  
Equipment**

All equipment to be purchased under this Agreement shall be listed in the scope of work. All equipment must be purchased, managed, and disposed of in accordance with OMB Circular A-102 Attachment N.

**Exhibit C  
Title 6, Civil Rights Act of 1964**

During the performance of this Agreement, the Planning Agency, for itself, its assignees, and successors in interest, hereinafter referred to as the "Consultant," agree as follows:

1. Compliance With Regulations: The Consultant will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as a part of this Agreement.
2. Nondiscrimination: The Consultant, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Consultant will not participate either directly or indirectly in the discrimination prohibited by Section 8.4 of the Regulations, including employment practices when the contract covers a program set forth in Appendix A-11 of the Regulations.

3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. Information and Reports: The Consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State Transportation Department or the Federal Highway Administration to be pertinent to ascertain compliance with such regulations, orders, and instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the State Transportation Department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the State Transportation Department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding of payment to the Consultant under the contract until the consultant complies, and/or
  - b. Cancellation, termination, or suspension of the contract, in whole or in part.
6. Incorporation of Provisions: The Consultant will include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The consultant will take such action with respect to any subcontract or procurements as the State Transportation Department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the consultant becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the consultant may request the State to enter into such litigation to protect the interest of the United States.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT on the day and year last written

**PLANNING AGENCY**

**STATE**

By: \_\_\_\_\_

By: \_\_\_\_\_

Assistant Secretary/Regional Administrator

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



- Regular Transportation Planning Organization Agreement (224-092)

**Regular Transportation Planning Organization Agreement**

Standard Form

- Metropolitan/Regional Transportation Planning Agreement (224-095)

**Metropolitan/Regional Transportation Planning Agreement**

Standard Form

## 3.5 GM - General Maintenance

### Description

A maintenance agreement provides for the maintenance of roadways and transportation-related appurtenances by either WSDOT or a local agency. The agreement can be for costs incurred, based on an estimated amount paid annually, or for no cost.

### When Used

This agreement is used when either WSDOT or a local agency has a need or a desire to contract out maintenance activities to the other party. For example, when a small city has a traffic signal system at the intersection of two city streets and does not have either the equipment or the expertise to maintain and operate the system, WSDOT could be hired.

There are instances when WSDOT will enter into an agreement to have a local agency provide maintenance on a facility that falls clearly within the responsibility of WSDOT, but that will be maintained by the local agency in conjunction with an overall trail system, for example, a bike/pedestrian path built by WSDOT on highway right of way. The same holds true for park-and-ride facilities built by WSDOT and used by a local transit agency.

### Agreement Check List

#### Communication & Negotiation

- ☐ The following are some maintenance and operation agreements that have been entered into with local agencies where the department is providing the service:

- ☐ Signal or illumination
  - Preventative maintenance
  - Emergency maintenance
  - Signal timing and adjustments

- ☐ Snow plowing and removal

- ☐ Newly incorporated city or town

These activities are usually phased out after the local agency has obtained equipment and personnel. However, there are occasions when we will continue to provide these services for many years.

- Maintenance of the state highway only.
- Maintenance of city/town streets
- Signals and illumination
- Sweeping, snow plowing and removal

## Agreement Preparation

### ☐ Region

- ☐ Prepare the standard form agreement
  - ☐ Maintenance Agreement - Work by WSDOT - Actual Costs (224-093EF) See example at the end of this chapter.

### Or

- ☐ Prepare a nonstandard agreement

The use of a nonstandard agreement format requires review by the OSC Utilities Engineer and approval as to form by an assistant attorney general (AAG) assigned to the Department of Transportation.

When preparing either type of agreement, the following information is required in the agreement:

- ☐ Complete the following required information on page one of the standard form agreement or include it as part of the body of the nonstandard agreement:

- ☐ Local agency name and address
- ☐ Federal Tax ID
- ☐ Agreement Number

The agreement number is obtained by contacting the OSC Accounting Section and providing the information shown here.

- ☐ Estimate of Costs
- ☐ Description of Work - actual work being performed under the agreement. List any exhibits that will be used.
- ☐ Prepare exhibits, if any.

- ☐ Other agreement format

There are agencies that request and/or require the use of their own agreement forms or formats. In these cases, we will usually honor the request as long as there is protection for the department and the agreement format provides for the needed information (cost, scope, etc.). These agreements will require the same review and approval that apply to the nonstandard format agreements shown above.

- ☐ Submit standard form agreement to local agency for signature, including:
  - ☐ Transmittal letter
  - ☐ Two originals with blue manuscript backing

⇓ Go to EXECUTION.

### Or

- ☐ Submit a DRAFT of the nonstandard agreement to the local agency for review, comment, and acceptance.

If the agreement requires OSC approval, you should obtain the local agency's final comments before the agreement package is submitted to OSC. Any outstanding issues or questions should be cleared up at this time.

- ☐ Transmit the nonstandard agreement to OSC for review and approval
  - ☐ Memorandum
  - ☐ Transmittal Check List See Appendix, Figure 1.
  - ☐ Agreement Edit Information Form (130-005EF) See Appendix, Figure 2. Who the Agreement Manager identified on this form is will depend on how each region delegates agreement responsibility.
  - ☐ Seven copies of agreement with blue manuscript backing
    - Two originals will be returned following approval as to form.

- ☐ **OSC - Utilities Section**

- ☐ Review exhibits to ensure:
  - Completeness, and
  - That nothing in the exhibits contradicts the body of the agreement.
- ☐ Return comments and/or approval to the Regional Administrator.

- ☐ **Region**

- ☐ Address comments, if any, and resubmit to the OSC Utilities Section for assistant attorney general (AAG) approval.

**Or**

- ☐ Submit nonstandard agreement to the local agency for signature, including:
  - ☐ Transmittal letter
  - ☐ Two originals with blue manuscript backing

- ☐ **Execution**

- ☐ **Region**

- ☐ Following its return from the local agency, execute the agreement on behalf of WSDOT.
  - ☐ Return the agreement to the local agency
    - ☐ Duplicate original agreement
    - ☐ Transmittal letter
  - ☐ Copy for region file

- ☐ Submit agreement package to OSC Utilities Section
  - ☐ Memorandum
  - ☐ WSDOT's original agreement with blue manuscript backing
  - ☐ If a standard form agreement, include the following
    - Transmittal Check List See Appendix, Figure 1.
    - Agreement Edit Information Form (130-005EF) See Appendix, Figure 2. Who the Agreement Manager identified on this form is will depend on how each region delegates agreement responsibility.

### **Standard Form Agreement**

The following standard agreement form is available as a FileMaker Pro file (MaintenanceAgreements.fp3) :

*Maintenance Agreement - Work by WSDOT - Actual Cost (224-093EF)*

See the example at end of this chapter.

### **Support Documentation**

#### ***References***

Memorandum E. R. Burch, May 18, 1997, City Streets as Part of State Highways - Final Report (April 30, 1997)

### **Management**

#### ***Oversight of Work Performed***

The work performed should be reviewed and inspected by regional engineering, maintenance, or traffic personnel, depending on the type of work involved.

#### ***Executed by:***

Assistant Secretary for Field Operations Support (ID 01-01, IV.B.3) with further delegation authorized.

#### ***Agreement Closure***

Maintenance agreements are usually written to accomplish a long-term function that would preclude the agreement from being closed when the work is done. Some of the agreements contain language that provides for WSDOT and the local agency to review the cost estimate periodically and allows for adjustment of the costs. Termination clauses are prevalent in this type of agreement, which give either party the ability to conclude the work being performed.

***Audit of Agreement***

An audit is required on any payable agreement in excess of \$100,000. However, an audit can be requested at any time.

***Supplementing Agreement***

Supplementing of a maintenance agreement requires the writing of a nonstandard format agreement. In most cases, the original agreement clauses will continue to be in effect and the scope will be revised with work either being added or removed.

- Maintenance Agreement (224-093EF) *MaintenanceAgreement.fp3*



Washington State  
Department of Transportation

<b>Maintenance Agreement</b>  Work by WSDOT Actual Costs	Organization and Address
	Federal Tax ID
Agreement No.	Estimated Costs
Description of Work	

This AGREEMENT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, by and between the State of Washington, Washington State Department of Transportation, acting by and through the Secretary of the Department of Transportation, under virtue of RCW 47.28.140, and hereinafter designated as the "STATE," and the above named organization, hereinafter designated as the "AGENCY,"

Whereas, the AGENCY has requested the STATE to perform certain work as described above, and the AGENCY does not have the adequate personnel or equipment to perform the work,

NOW THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

### **I GENERAL**

The STATE as agent, acting for and on behalf of the AGENCY, shall perform the above described work.

### **II PAYMENT**

The estimated cost of the work is as defined above. The AGENCY agrees to set aside funds for payment to the STATE for such work in this amount.

The AGENCY agrees to reimburse the STATE for the actual cost of the work. Payment shall be made upon presentation of progress billings by the STATE, and within thirty (30) days after the AGENCY has received each billing.

The AGENCY agrees further that if payment for progress billings is not made to the STATE within forty-five (45) days after the AGENCY has been billed for the work, the STATE may withhold any monies which the AGENCY is entitled to receive from the Motor Vehicle Fund and apply the withheld monies to the amount billed by the STATE until satisfied.

DOT Form 224-093 EF  
Revised 7/97



**III  
INDEMNIFICATION**

The AGENCY will protect, save and hold harmless the STATE, Washington State Department of Transportation (WSDOT) and their officers, agents, and employees, from all claims, actions, costs, damages, or expenses of any nature whatsoever by reason of the acts or omissions of WSDOT, their assigns, agents, contractors, licensees, invitees, employees, or any person whomsoever arising out of or in connection with any acts or activities authorized by this agreement. The AGENCY further agrees to defend the WSDOT and their authorized agents and employees in any litigation, including payment of any costs or attorney fees for any claims or action commenced thereon arising out of or in connection with the acts for activities authorized by this agreement. This obligation shall not include such claims, costs, damages, or expenses which may be caused by the sole

negligence of WSDOT or their authorized agents or employees: PROVIDED that if the claims or damages are caused by or result from the concurrent negligence of:

- a. WSDOT and their agents or employees, and
- b. the AGENCY, its agents or employees and involves those actions covered by RCW 4.24.115, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the WSDOT, or their agents or employees.

**IV  
RIGHT OF ENTRY**

The LOCAL AGENCY herein grants and conveys to the STATE the right of entry upon all land which the LOCAL AGENCY has interest, within or adjacent to the right of way of the highway or street for the purpose of accomplishing the work described as part of this agreement.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the day and year first above written.

**LOCAL AGENCY**

By: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

**STATE OF WASHINGTON  
DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_



## 3.6 HRD - Haul Road or Detour

### Description

A detour or haul road agreement is entered into with a county or city when the state proposes to use a county road or city street for detouring traffic or hauling materials associated with a highway improvement project.

### When Used

A detour or haul road agreement may be entered into with a local agency when WSDOT proposes to use roads or streets for detouring traffic or hauling materials associated with a highway improvement project. Another option, at the discretion of the local agency, is for WSDOT to utilize the local agency's permitting process. Often the local agency has a Street Use or Public Works permit that they would prefer to use.

### Agreement Check List

#### Notification

During the development of the PS&E, when the need for a detour or haul route that would utilize a local agency's roads or streets is determined, the local agency will be contacted. These early communications are necessary for swift execution of the agreement that is necessary for WSDOT to use the local agency's streets or roads.

Please be aware that the local agency has some options available to them, including:

- The routes proposed by WSDOT can be revised to suit the local agency. The local agencies know the conditions of their streets and roads.
- Conditions or restrictions of use may be placed on any route or portion of route prior to the execution of the agreement.
- The local agency can refuse the use of their roadways for use as a detour or haul route.
- The local agency may wish to utilize their own agreement format (for example, Right of Way Use Permit or Street Use Permit). Our standard form agreement has clauses that give the local agency certain rights that may not be included when using their forms (for example, before and after review and documentation of the condition of the route).

The above options make it very important to work closely with and to have early communication with the local agencies after we recognize that there is a need for a detour or haul route.

## ☐ **Review & Negotiation**

### ☐ **Region**

- ☐ Identify the proposed route(s)
  - ☐ Road or street name
  - ☐ Signing
  - ☐ Duration
  - ☐ Current condition of roadway

## ☐ **Agreement Preparation**

### ☐ **Region**

- ☐ Prepare the appropriate standard form agreement
  - ☐ Local Agency Haul Road/Detour Agreement (224-014EF)
- ☐ Complete the required information on page one of the standard form agreement, including:
  - ☐ Local agency name and address
  - ☐ Section of highway - using construction project title
  - ☐ Description of roads or streets
    - ☐ Name of road or street, then the limits of the route on that road or street (for example, South 19<sup>th</sup> Street from Hosmer to Sprague Ave.)
  - ☐ SR number
  - ☐ Control section
  - ☐ Region
  - ☐ Intended use
    - ☐ Will the route be used as a detour or haul road?
  - ☐ Vehicle restrictions
    - ☐ If the local agency has ANY conditions or restrictions for the use of the route, they **MUST** be noted as part of the agreement.
  - ☐ Agreement Number - HRD followed by the region number, hyphen, and then a four digit numerical sequence number. (For example, HRD 1-0162. Agreement number 162 in the Northwest Region) See **Agreement Numbering** in **1-4 Definitions/Glossary**.
- ☐ Plan sheet(s) showing the route to be used, construction/detour signing of the route, and any other sheets that are pertinent to the haul road or detour.
- ☐ Return comments and/or approval to the Regional Administrator.

## ☐ **Execution**

The department executes the agreement prior to advertising for construction.

### ☐ **Region**

- ☐ Submit the agreement to the local agency for signature.
- ☐ Execute the agreement on behalf of WSDOT.
  - ☐ An executed original of the agreement is to be retained in the region as the WSDOT file.
  - ☐ Forward a duplicate original of the executed agreement to the local agency.
  - ☐ Provide a copy of the executed agreement to:<sup>8</sup>
    - OSC - Project Development Office, Plans Branch
    - OSC - Project Development Office, Land Management Branch

## ☐ **During Construction**

### ☐ **Region**

- ☐ Joint inspection

Per Section II, immediately prior to beginning use of the local agency's roads or streets, both WSDOT and the local agency will conduct a joint inspection of the current conditions of the route to be used. A memorandum of record will be prepared to identify existing conditions and to record the local agency's normal maintenance operations carried out on the sections of roadways to be used.

- ☐ Maintenance and operation

Per Section III of the standard form, WSDOT is responsible for the cost of additional maintenance and operation required during use of the local agency's roads or streets as a detour or haul route. Additional costs will have been determined and noted during the inspection conducted per Section II of the standard form.

## ☐ **Completion of Use of the Route**

### ☐ **Region**

- ☐ Joint inspection
- ☐ Per Section IV, of the standard form, both parties will conduct an inspection to determine the condition of the roads or streets following their use as a detour or haul route. Any maintenance and/or repairs will be

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<sup>8</sup> Each region has a process for the routing of executed agreements. The sections listed here are the ultimate destination of the copies, since they provide final approval for a construction project to go on ad.

based on the current condition of the roadway, taking into account the initial inspection memorandum of record made under Section II of the standard form.

## ☐ **Planning for the Use of Local Agency Roadways**

### ☐ **Region**

#### ☐ Programming additional funds

If, during the early development of the project, it is determined that there may be the need to utilize a local agency's roads or streets for a long-term haul road or detour, additional funding will need to be set up in the construction program. The funding magnitude will have to be determined based on length of use, amount of additional traffic, and current condition of the route.

#### ☐ Communication with the local agency early in the development of the project will help develop a cost. The local agency may be planning to do an overlay of that section of roadway in the near future and we may be able to provide a lump sum<sup>9</sup> payment to the agency for use of the roadway as a detour.

## **Standard Form Agreement**

The following standard agreement form is available as a FileMaker Pro file (LocalAgencyParticipatingAgreements.fp3):

*Local Agency Haul Road/Detour Agreement (224-014EF)*

See the example at the end of this chapter.

## **Support Documentation**

### ***References***

WAC 468-18-030 Department of Transportation, State Aid, Policy governing use of county roads as haul roads on state highway projects

## **Management**

### ***Executed by:***

Assistant Secretary for Environmental & Engineering (ID 01-01, IV.C.35) with further delegation to the State Design Engineer (3-1-96 Memo)

The haul road/detour agreement, using DOT Form 224-014EF, provides for approval by the Regional Administrator. Altered standard form and nonstandard form agreements require approval as to form by the Attorney General and execution of the agreement through the OSC Utilities Section.

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<sup>9</sup> When using a lump sum, you must provide a detailed estimate of how the amount was determined.

### ***Agreement Closure***

Following the joint inspection of the standard form per Section IV and acceptance of the route by the local agency, the agreement may be closed. Copies of the acceptance letter shall be sent to:

- Accounting;
- The Agreement Manager as currently listed in TRAINS; and
- The agreement originator/writer for the completion of the region's agreement file.


### ***Audit of Agreement***

This agreement may be audited as a part of the overall construction contract of which the agreement is a part. If the agreement is in excess of \$100,000, an audit will be performed. However, an audit may be requested at any time.

### ***Supplementing Agreement***

This type of agreement is not normally supplemented. If the route has changed, another agreement can be written using the standard form agreement. Use new number and close the old agreement.

- Local Agency Haul Road/Detour Agreement (224-014EF) *Local AgencyParticipatingAgreements.fp3*

 <b>Washington State Department of Transportation</b>		<b>Local Agency Haul Road/Detour Agreement</b>		Organization and Address	
Agreement Number		Section / Location			
State Route Number	Control Section Number				
Region		Description of Roads or Streets			
Intended Use (Haul Road or Detour Road)					
Vehicle Restrictions					

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between the STATE OF WASHINGTON, Department of Transportation, acting by and through the Secretary of Transportation, (hereinafter the "STATE") and the above named organization, (hereinafter the "LOCAL AGENCY").

WHEREAS, the STATE is planning the construction or improvement of a section of state highway as shown above, and

WHEREAS, in the construction of the project it is planned to use, for the purpose noted above, those LOCAL AGENCY roads or streets described above and as further detailed in red on the attached Exhibit "A", and

WHEREAS, it is anticipated that as a result of the use of these roads or streets, additional maintenance expense may be incurred by the LOCAL AGENCY.

NOW THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

**I**

The LOCAL AGENCY hereby agrees to the STATE's use of the roads or streets covered by this AGREEMENT subject to the conditions contained herein.

**II**

Immediately prior to the beginning of the STATE's use of the above described roads or streets, the parties to this AGREEMENT shall make a joint condition inspection and the STATE shall prepare a memorandum record of the condition of said roads or streets. The memorandum record shall include a statement of the extent and frequency of routine maintenance operations normally carried out by the LOCAL AGENCY on said roads or streets and may include photographs showing condition of the existing roadway.

**III**

The STATE agrees to reimburse the LOCAL AGENCY for the cost of additional routine maintenance and repairs, operations in excess of those enumerated in the record made under the provisions of Section II, made necessary by the STATE's project. The reimbursement for such additional routine maintenance and repairs shall be limited to the actual cost of such operations supported by proper records. Such costs are to be exclusive of all administrative and overhead costs and all charges for small tools.

DOT Form 224-014 EF  
Revised 1/98

**IV**

Upon completion of use of the roads or streets covered by this AGREEMENT, a joint inspection shall be made by the parties to determine the condition of said roads or streets. All maintenance and/or repairs shall be based upon the conditions of these roads or streets at the time of this completion inspection, taking into account the memorandum record made under Section II.

**V**

It is expressly understood that the STATE shall be responsible only for that extra maintenance and repairs of the LOCAL AGENCY's roads or streets occasioned by the project use. In the event of a dispute over the terms of this AGREEMENT and/or the extent of maintenance or repair work required to be performed, the dispute shall be submitted to the Secretary of Transportation for determination. In determining this responsibility the Secretary shall give consideration to the memorandum record provided for in Section II. The conclusions of the Secretary as to the extent and amount of such maintenance shall be final and conclusive as to all parties to this AGREEMENT.

**VI**

The LOCAL AGENCY agrees not to restrict below legal limits the size, weight, or speed of vehicles using the roads or streets covered by this AGREEMENT except as stated above under Vehicle Restrictions.



**VII**

No liability shall attach to the STATE or the LOCAL AGENCY  
by reason of entering into this AGREEMENT except as  
expressly provided herein.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the day and year first above written.

**LOCAL AGENCY**

**STATE OF WASHINGTON  
DEPARTMENT OF TRANSPORTATION**

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

DOT Form 224-014 EF  
Revised 1/98



## 3.7 LA - Local Agency

### **Description**

An agreement entered into between WSDOT and a local agency for the dispersal of federal aid funds to the agency.

### **When Used**

A Local Agency agreement and the local agency wishes to obligate funds for expenditures on that project.

### **Why Used**

The LA agreement process is the approved mechanism to secure authorization of funding on a local agency's federal-aid project, as required by the Local Agency Guidelines.

### **Agreement Check List**

Refer to Chapter 22 of the Local Agency Guidelines for LA agreement process and procedures.

### **Standard Form Agreement**

The following standard agreement form is available as a FileMaker Pro file (140-039-LocalAgencyAgreement.FP3):

*Local Agency Agreement (140-039EF)*

The following standard agreement form is available as a FileMaker Pro file (140-041-LocalAgencyAgreementSupplement.FP3):

*Local Agency Agreement Supplement (140-041EF)*

### **Support Documentation**

#### ***References***

- M 36-63                      *Local Agency Guidelines, Chapter 22*
- ID 01-01                    "Delegation of Authority"

### **Management**

#### ***Executed by:***

Assistant Secretary for Highways and Local Programs (ID 01-01, IV.E.2)

#### ***Agreement Closure***

Refer to the Local Agency Guidelines for LA agreement process and procedures.

#### ***Audit of Agreement***

Refer to the Local Agency Guidelines for LA agreement process and procedures.

***Supplementing Agreement***

Refer to the Local Agency Guidelines for LA agreement process and procedures.

## 3.8 LM - Local Mitigation

### Description

A Local Mitigation (LM) agreement is used for the transfer to WSDOT of traffic mitigation fees that have been levied on a developer by a local agency.

### When Used

During the SEPA process, a review of a development's projected traffic impacts to the surrounding streets, roads, and highway systems is used to determine the dollar amounts to be collected for mitigation by the local agency through its permitting process.

This agreement passes on to WSDOT those funds that have been collected as the result of the development's impact to the state's highway system.

### Why Used

WSDOT does not have a process to collect impact fees directly from local agencies as mitigation by developers for increased traffic to our highway system.

### Agreement Check List

#### ☐ Agreement Setup

Each region will need to work with the local agencies within the region to establish a process for the collection of mitigation dollars. For example, each local agency would notify the region either quarterly or semi-annually of the amount collected from developers through the permitting process.

Mitigation dollar amounts are determined during the SEPA process for reviewing traffic analysis for impacts to state projects. Dollar amounts are determined with the local agency by a mutually accepted formula. For example, a \$36.00 per ADT produced by the new development or a pro-rata share toward the cost of the state project (new development trips / capacity of roadway  $\times$  cost of project = payment amount).

The following are requirements of the state for the mitigation dollars:

- Amounts must be spent within five years from the date collected.
- Amounts must be used on a project impacted by the development for:
  - Design phase activities (such as design engineering, PS&E development, etc.);
  - Right of way acquisition; or
  - Construction of the state's project.

#### ☐ Region

☐ Fill out the standard agreement form

☐ Complete the required information on page one of the standard form agreement:

- ☐ Local agency name and address
- ☐ SR number
- ☐ Section of highway - use construction title, if available
- ☐ Description of work - work being proposed
- ☐ Control section
- ☐ Region
- ☐ Agreement number
  - ☐ The agreement number is obtained by contacting the OSC Accounting Section and providing most of the information shown above.
- ☐ Mitigation payments collected
 

This information is furnished by the local agency from their records of mitigation dollars collected.

  - ☐ Developer name
  - ☐ Company name
  - ☐ Date collected
  - ☐ Amount
  - ☐ Total
- ☐ Have the Regional Administrator sign the agreement prior to the local agency signature. This saves the time of preparing the document, sending it to the local agency for signature, the local agency returning it for WSDOT signature, and sending it back to the local agency to process the payment.
- ☐ The signed agreement is sent to the local agency for signature and to process the payment.
- ☐ Following the return of the state's original duplicate agreement, it is forwarded to OSC with:
  - ☐ Memo transmitting agreement
  - ☐ Agreement Edit Information form
- ☐ **OSC**
  - ☐ Transfers funds to the appropriate work order or suspense account
- ☐ Job is completed

### **Standard Form Agreement**

The following standard agreement form is available as a FileMaker Pro file (LocalAgencyParticipatingAgreement-Developer.fp3):

*Local Agency Participating Agreement - Developer Mitigation Payments for Transfer to State (224-015EF)*

See the sample agreement at the end of this chapter.

**Support Documentation**

***References***

RCW 82.02.020 Excise Taxes, General Provisions, State preempts certain tax fields—Fees prohibited for the development of land or buildings—Voluntary payments by developers authorized—Limitations—Exceptions

**Management**

***Executed by:***

Assistant Secretary for Environmental & Engineering (ID 01-01, IV.C.29) with further delegation to the State Traffic Engineer, the State Design Engineer, and the Environmental Affairs Manager (3-1-96 Memo)

***Agreement Closure***

***Audit of Agreement***

No audit is required for a reimbursable agreement.

***Supplementing Agreement***





**I  
GENERAL**

The STATE will apply all funds collected by the AGENCY pursuant to RCW 82.02.020 to the project shown above under DESCRIPTION OF WORK. In the event the STATE does not utilize the funds within the statutory time period, the STATE shall refund the funds to the property owner of record at time of refund in accordance with RCW 82.02.020.

The STATE shall act as lead agency in developing the contract documents and administering a contract that will address traffic congestion on the noted highway improvement.

Plans, specification, and costs estimates shall be prepared by the STATE in accordance with the current State of Washington Standard Specifications for Road, Bridge, and Municipal Construction and adopted design standards, unless otherwise noted. The STATE will incorporate the plans and specifications into the STATE project and thereafter advertise the resulting project for bid and assuming bids are received and a contract is awarded, administer the contract.

**II  
PAYMENT**

Upon execution of this agreement certifying the project is currently budgeted the AGENCY will transfer to the STATE the amount of mitigation payments shown in the heading as "TOTAL FUNDS TRANSFERRED TO STATE FOR THIS PROJECT."

**III  
LEGAL RELATIONS**

No liability shall be attached to the STATE or the AGENCY by reason of entering into this agreement except as expressly provided herein.

The STATE will hold the AGENCY harmless and defend at its expense any failure by the STATE to comply with RCW 82.02.020 by not constructing the project or not refunding the funds received to the property owner of record.

**IV  
EFFECTIVE DATE**

This agreement shall become effective on the date executed by the parties hereto, and continue until the project is completed or the funds are returned to the property owner of record.

**V  
CHANGES**

This agreement may be amended, altered, changed, or extended only by written agreement of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the day and year first above written.

**AGENCY**

**STATE OF WASHINGTON  
DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



### 3.9 OH - Overhead Reciprocal

#### **Description**

Overhead Reciprocal Agreements are entered into between WSDOT and local agencies when WSDOT and the local agency agree not to charge each other for overhead costs when performing work or services for each other. These agreements were developed to allow more local agencies and WSDOT funds to go toward projects. Department overhead is not considered to be directly related to a specific product or service.

A list of the agencies with whom WSDOT has executed Overhead Reciprocal Agreements is available from each of the region Accounting Offices or from OSC Accounting.

#### **When Used**

These agreements are initiated by the regional Highways and Local Programs offices. Once the agreement is signed by the local agency, it is then forwarded for execution to the OSC Office of the Assistant Secretary for Finance And Budget Management. An agreement number is then assigned by the Comptroller's Office/Project Support Services Section.

We should be careful to not enter into this type of agreement when there will not be a mutual benefit, such as with a local Port Authority that will probably never perform work for this department.

#### **Agreement Check List**

- ☐ **Region**
  - ☐ Fill out the agreement using the standard format shown in this chapter
  - ☐ Obtain the agreement number from the OSC Accounting Section
  - ☐ Transmit two original agreements with blue manuscript backing to the local agency for signature
  - ☐ Transmit the signed agreements to the OSC Finance and Budget Management Office through OSC Accounting
- ☐ **OSC**
  - ☐ Execute agreement
  - ☐ Transmit local agency copy to the region
- ☐ **Region**
  - ☐ Make a copy for the region files (if required)
  - ☐ Transmit the local agency original to the local agency

#### **Standard Form Agreement**

There is no standard form for this agreement. See below for the format used.

**RECIPROCATING AGREEMENT  
FOR OVERHEAD CHARGES**

**OH #-0000**

This agreement, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between the Washington State Department of Transportation herein after called "WSDOT" and the Local Agency, Address, City, Washington, 98\_\_\_\_, herein after called the "LOCAL AGENCY<sup>10</sup>".

WHEREAS, WSDOT at times performs work for the LOCAL AGENCY and the LOCAL AGENCY at times performs work for WSDOT.

NOW THEREFORE, in consideration of the promises, conditions, and performances set forth below, the parties agree as follows:

WSDOT and the LOCAL AGENCY agree not to charge each other for overhead costs when performing work or services for the other.

Either party may terminate this AGREEMENT by notifying the other party of the termination 12 months prior to the date of termination.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT as of the day and year first written above.

**LOCAL AGENCY**<sup>11</sup>

**WASHINGTON STATE  
DEPARTMENT OF TRANSPORTATION**

\_\_\_\_\_  
By:

\_\_\_\_\_  
Title:

\_\_\_\_\_  
Date:

**Approved as to Form**

\_\_\_\_\_  
By:

\_\_\_\_\_  
Title:

\_\_\_\_\_  
By:

**Assistant Secretary for  
Finance and Budget Management**

**Approved as to Form**

\_\_\_\_\_  
Assistant Attorney General:

<sup>10</sup> Insert CITY or TOWN or COUNTY in place of LOCAL AGENCY throughout the agreement.

<sup>11</sup> Insert agency name, such as CHELAN COUNTY or CITY OF WATERVILLE

## **Support Documentation**

### ***References***

Instructional Letter IL 13-21, "Indirect Cost Rate" (This document will be replaced with the *Accounting Manual*.)

## **Management**

### ***Executed by:***

Assistant Secretary for Finance & Administration (ID 01-01, A.4) with further delegation authorized.

### ***Agreement Closure***

The agreements are perpetual until termination is requested by either party with 12 months notice.

### ***Audit of Agreement***

An audit of this type of agreement is not required.

### ***Supplementing Agreement***

Any modifications required will be done through a new agreement.



## 3.10 RR - Railroad

### Description

WSDOT enters into Railroad Agreements with various railroads operating within Washington State for participation in studies, planning, plan development, plan review, right of way acquisition, maintenance, repairs, and construction. Due to the specialized nature and the infrequent need for them, the OSC Railroad Liaison should be consulted on all Railroad Agreements

### When Used

A Railroad Agreement is used when WSDOT and a railroad entity are to exchange funds or share responsibilities, or for services performed by either of the entities.

NOTE: If flagging (railroad protective s, an agreement is not required. At times, flagging may be covered by an agreement required for other items or conditions.

Railroad flagging or railroad protective services can typically only be performed by the railroad. Workers not employed by the railroad do not have access to train schedules or radio communications required for effective performance of this work -- competition is not possible. These services may be acquired under WSDOT Purchase Authority G3b due to the sole source/special market conditions of the work. See Appendix 1 of the WSDOT *Purchasing Manual*.

If an agreement exists that covers flagging services, these charges should be paid under Category 02. In the absence of an agreement, they should be paid under Category 04. A separate, clearly defined group set up not to accept labor (N) should be established under Category 04 to distinguish these charges from true state force charges.

### Why Used

This agreement is used to document a consensus on work and items for payment between the railroad entity and the department. The agreement should outline the work to be done or responsibilities to be shared, estimate the cost, describe how payment will be made, identify responsibilities, and provide legal protection.

### Standard Form Agreement

The following standard agreement forms are available as a FileMaker Pro file (RailAgreements.fp3):

*Highway - Railroad Grade Crossing Agreement (224-060EF) and*

*Rail Protective Services Agreement (224-078EF)*

See the sample agreements at the end of this chapter.

The following standard agreement forms are available in single copy or pad:

*Railroad Preliminary Engineering Agreement (224-079),*

*Highway - Railroad Grade Crossing Lump Sum Agreement (224-081), and*

*Highway - Railroad Grade Crossing Diagnostic Team Review (224-088)*

These agreements are currently out-dated and are being revised.

### **Nonstandard Agreement**

Often a standard form agreement will not fit the scope of work or will not be acceptable to the railroad. The agreement will then have to be written as a non standard agreement. The OSC Railroad Liaison should be consulted for assistance with non standard agreements.

### **Support Documentation**

#### ***References***

### **Management**

#### ***Executed by:***

Assistant Secretary for Environmental & Engineering (ID01-01, IV.C.7) with delegation to the State Design Engineer (3-1-96 Memo) and with further delegation to the Accommodations Engineer and the Railroad Engineer (6-11-98 Memo)

#### ***Agreement Closure***

It is the responsibility of the agreement manager to notify Accounting to close the agreement following the last payment. NOTE: It is not uncommon for railroads to submit a bill a year or more after the work has been completed. While the untimely submission of the bill may present a problem, it will be paid. Continued good relations with the railroads require our system to be flexible in handling these late billings. Therefore, it is important to be sure that all work has been billed prior to closing the agreement.

#### ***Audit of Agreement***

An audit is required for a payable agreement that is in excess of \$100,000. However, an audit may be requested at any time.

#### ***Supplementing Agreement***

At times it will be necessary to supplement a Railroad Agreement. Supplements will normally be triggered by the addition of new items of work. It is usually not necessary to supplement a Railroad Agreement simply because the billings exceed the railroad's estimate. Railroad Agreements are generally actual cost agreements set up in Accounting, so they can be substantially overrun to accommodate the uncertainties in the type of work.



- |  |                        |
|--|------------------------|
| Washington State<br>Department of Transportation   |                        |
| <b>Highway - Railroad<br/>Grade Crossing<br/>Agreement</b>   |                        |
| Railroad Company and Address   |                        |
| WSDOT Billing Address  |                        |
| Section / Location   |                        |
| Agreement Number   |                        |
| State Route  | Control Section        |
| Region   | Estimated Amount<br>\$ |
| Railway's Reference  |                        |
| Description of Improvements and Division of Work   |                        |
| <p>A. Work to be performed by the RAILWAY, or its contractor, at STATE expense<br/>(included in the Estimate of Cost):</p> <p>B. Work to be performed by the RAILWAY, or its contractor, at RAILWAY expense<br/>(not included in the Estimate of Cost):</p> <p>C. Work to be performed by the STATE, or its contractor, at STATE expense<br/>(not included in the Estimate of Cost):</p> |                        |

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, between the STATE OF WASHINGTON, Department of Transportation, acting by and through the Secretary of Transportation, hereinafter called the "STATE", and the above named Railroad Company, hereinafter called the "RAILWAY".

WHEREAS, the STATE desires that the above described improvements be constructed at the referenced location, and

WHEREAS, it is deemed to be in the best public interest for the RAILWAY, as owners of the track or tracks, to perform specific work as herein described, and

WHEREAS, the STATE is obligated to reimburse the RAILWAY for all or part of the cost incurred by the RAILWAY in undertaking specific work as herein described.

NOW THEREFORE, in consideration of the terms, conditions, covenants and performances contained herein, or attached and incorporated and made a part hereof, IT IS MUTUALLY AGREED AS FOLLOWS:

#### **I GENERAL**

This AGREEMENT will be governed by the applicable sections of Title 23, U.S. Code, Highways; Federal-Aid Policy Guide and amendments thereto. These references are incorporated hereby and made a part of this AGREEMENT for all intents and purposes as if fully set forth herein.

#### **II DIVISION OF WORK**

The STATE and the RAILWAY will perform the work as set forth in the above "Description of Improvements and Division of Work."

The RAILWAY will provide all the work, labor, materials and services to install warning devices and/or perform other work as described and set forth in the "Description of Improvements and Division of Work." A site plan labeled Exhibit "B", attached hereto and by this reference made a part of this AGREEMENT, further described the proposed improvements.

The RAILWAY agrees that it will follow the provisions of Article 1 when selecting the services of a consultant or contractor or both. The RAILWAY's contract with the consultant or contractor or both is subject to approval by the STATE.

If work is to be performed by the STATE as described in this AGREEMENT, the RAILWAY hereby grants the STATE permission to enter upon the RAILWAY's property for the purpose of performing said work.

#### **III AUTHORITY TO BEGIN WORK**

The RAILWAY agrees not to commence work until receipt of notice to begin work in writing by the STATE, and that reimbursement will be limited to those costs incurred subsequent to the date of such notification. The RAILWAY agrees to notify the STATE approximately one week prior to beginning work on the site.

#### **IV PAYMENT**

The STATE, in consideration of the faithful performance of the work to be done by the RAILWAY, agrees to pay the RAILWAY actual direct and related indirect costs accumulated in accordance with a work order accounting procedure as prescribed and approved by the ICC Uniform System of Accounts, or its equivalent.

An itemized estimate of cost for work to be performed by the RAILWAY at the STATE's expense is shown on Exhibit "A," attached hereto and by this reference made a part of this agreement.

Following execution of this AGREEMENT, progress bills may be submitted to the STATE to cover costs incurred and the STATE shall pay such progress billings promptly upon receipt. Progress bills are not to be submitted more frequently than one (1) per month. Billings should clearly identify preliminary engineering charges from construction and construction engineering charges.

Final and detailed billing on all incurred costs shall be made by the RAILWAY and furnished to the STATE within one hundred twenty (120) days of project completion, and the STATE shall pay all eligible amounts of such bill, less progress payments previously made.

It is agreed that payment of any billing will not constitute agreement as to the appropriateness of any item and that at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the RAILWAY, the RAILWAY agrees to refund such overpayment to the STATE.

During the progress of construction and for a period not less than three years from the date of final payment to the RAILWAY, the records and accounts pertaining to the construction of the project and accounting therefor are to be kept available for inspection and audit by the STATE and/or Federal Government and copies of all records, accounts, documents or other data pertaining to the project will be furnished upon request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claim or audit finding has been resolved even though such litigation, claim, or audit continues past the three-year retention period.

## **V PROTECTIVE SERVICES**

All work herein provided for to be done by the STATE or its contractors, if any, on the RAILWAY's right of way, shall be performed by the STATE or its contractors in a manner as not to interfere with the movement of trains or traffic upon the tracks of the RAILWAY. The STATE or its contractors, shall use all care and precaution necessary to avoid accident, damage, or interference to the RAILWAY's tracks or to the trains or traffic using its tracks and notify the RAILWAY a sufficient time in advance whenever it is about to perform work adjacent to any track to enable the RAILWAY to furnish flagging and such other protective services and devices as might be necessary to ensure safety of railway operations, and the RAILWAY shall have the right to furnish all such flagging or protective services and devices as in its judgment are necessary, and the STATE shall reimburse the RAILWAY for the cost thereof. Whenever safeguarding of trains or traffic of the RAILWAY is mentioned in this AGREEMENT, it is intended to cover and include all users of the RAILWAY's tracks having permission for such use.

The RAILWAY will submit bills for such flagging and other protective services and devices used during progress of the work contemplated by this AGREEMENT. The RAILWAY will submit a final billing for flagging and other protective services and devices within one hundred twenty (120) days after notification by the STATE of completion of project, said one hundred twenty (120) days to commence upon receipt, by the RAILWAY, of the said notification of completion of the project.

## **VI INSURANCE**

The contract between the STATE and its contractor for construction work herein provided, if any, shall require the contractor to protect and hold harmless the RAILWAY and any other railroad company occupying or using the RAILWAY's right of way or line of railroad against all loss, liability and damage arising from activities of the contractor, its forces or any of its subcontractors or agents. Such indemnity provision shall be in accordance with RCW 4.24.115 as amended by ch. 305, Laws of 1986. The contract shall further provide that the contractor shall:

1. Furnish to the RAILWAY a Railroad Protective Insurance Policy in the form provided by FHPM 6-6-2-2. The combined single limit of said policy shall not be less than Two Million Dollars (\$2,000,000) for all damages arising out of bodily injuries to or death of any person or persons and for all damages arising out of the loss or destruction of or injury or damage to property in any one occurrence during the policy period, and subject to that limit a total (or aggregate) limit of not less than Six Million Dollars (\$6,000,000) for all damages during the policy period. Said insurance policy is to be executed by a corporation qualified to write the same in the state in which the work is to be performed, shall be in the form and substance satisfactory to the RAILWAY and shall be delivered to an approved by the RAILWAY prior to the entry upon or use of its property by the contractor.

2. Carry regular Contractor's Public Liability and Property Damage Insurance providing for a limit of not less than One Million Dollars (\$1,000,000) for all damages arising out of bodily injuries to or death of one person, and, subject to the limit for each person, a total limit of not less than Two Million Dollars (\$2,000,000) for all damages arising out of bodily injuries to or death of two or more persons in any one occurrence; and providing for a limit of not less than One Million Dollars (\$1,000,000) for all damages to or destruction of property in any one occurrence and subject to that limit a total (or aggregate) limit of not less than Two Million Dollars (\$2,000,000) for all damages to or destruction of property during the policy period. A certificate of insurance providing proof of Contractor's Public Liability and Property Damage Insurance, executed by a corporation qualified to write the same in the State of Washington and in form and substance satisfactory to the RAILWAY, shall be delivered to and approved by the RAILWAY prior to the entry upon or use of the RAILWAY's property by the contractor.

If the STATE, its contractor, subcontractor or agents, in the performance of the work herein provided for or by the failure to do or perform anything for which it is responsible under the provisions hereof, shall damage or destroy any property of the RAILWAY, such damage or destruction shall be corrected by the STATE in the event its contractor or the insurance carriers fail to repair or restore the same.

For any work performed in the State of Washington, nothing in this agreement is intended to be construed as a requirement for an indemnification against the sole negligence of the RAILWAY, its officers, employees or agents. Moreover, for any work performed in the State of Washington, the contractor shall specifically and expressly agree to indemnify the RAILWAY and any other railroad company occupying or using the RAILWAY's right-of-way or line of railroad against all loss, liability and damages, including environmental damage, hazardous materials damage, or penalties or fines that may be assessed, caused by or resulting from the contractor's negligence, provided, however, if such loss, liability, damage, penalties or fines are caused by or result from the concurrent negligence of (a) the RAILWAY or the RAILWAY's officers, employees or agents, and (b) the contractor or the contractor's employees, agents of subcontractors, such indemnity shall be valid and enforceable only to the extent of the negligence of the contractor or the contractor's employees, agents or subcontractors.

The contractor shall further agree that it has a duty to defend at its own expense, in the name and on behalf of the RAILWAY, all claims or suits for injuries or death of persons or damage to property arising or growing out of the work carried on under this agreement, for which the RAILWAY is liable or is alleged to be liable. However, upon a final determination in court of law in which a percentage of negligence is attributed to the RAILWAY, the RAILWAY agrees to reimburse the contractor in the same percentage for the costs involved in defending the suit.

**VII  
SALVAGE**

All material removed by the RAILWAY, which has been replaced at STATE expense, shall be reclaimed or disposed of by the RAILWAY and shall be credited to the STATE in accordance with Federal-Aid Highway Program Manual, Volume 1, Chapter 4, Section 3. The RAILWAY shall furnish written notice to the STATE for the time and place the materials will be available for inspection. If salvage credit is anticipated on this project, an estimate of the salvage credit will be included in the estimate of cost.

**VIII  
MAINTENANCE OF FACILITY**

Upon completion of the project, the STATE, at its sole cost and expense, shall maintain all improvements, other appurtenances, advance warning signs, standard pavement markings and guardrails with the exception of the crossing which will be maintained by the RAILWAY and STATE as provided by law.

Upon completion of the installation of said signals, the RAILWAY, at its sole cost and expense, shall operate and maintain said signals, provided however that the RAILWAY shall be entitled to receive reimbursement for any or all of the cost of such maintenance as may be made available by reason of any law, order, regulation or otherwise providing for the reimbursement of said costs.

**IX  
REPAIR OR REPLACEMENT  
OF DAMAGED FACILITY**

In the event the signal system installed under this AGREEMENT is partially or wholly destroyed and the cost of repair or replacement cannot be recovered from the person or

This AGREEMENT shall inure to the benefit of and be binding on the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the day and year first above written.

**Railway**

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

ANY MODIFICATION, CHANGE OR REFORMATION of this Boilerplate Agreement shall require approval as to form by the Office of the Attorney General.

DOT Form 224-060 EF  
Revised 11/96

persons responsible for such destruction, then, in that event the cost of repair or replacement shall be borne by the STATE and the RAILWAY at the same ratio under which the signals were installed.

In the event that either highway or railway changes will necessitate revisions of the signals by rearrangement, replacement or additions at the said location, the party whose changes cause said revisions will bear the entire cost of the same without obligation to the other.

**X  
DISPOSITION OF SIGNALS  
NO LONGER REQUIRED**

If for any reason signals shall no longer be required at said grade crossing, the RAILWAY, on the approval of the STATE, may remove said signals. If in the opinion of the RAILWAY said signals are not obsolete, they may, as agreed to by the STATE and RAILWAY under a separate agreement, be reinstalled at some other State Highway - railroad grade crossing. If no other crossing is agreed upon by the STATE and the RAILWAY, and prescribed by public authority, the STATE will be credited with the salvage value for material not previously replaced by the RAILWAY during maintenance, less cost of removal.

Ownership of the signals vests in the RAILWAY or STATE, whichever one paid for the signals as shown on the face of this agreement.

**XI  
PROJECT COMPLETION**


Within 30 days of project completion the RAILWAY will by letter notify the STATE that construction is completed.

**State of Washington  
Department of Transportation**

By \_\_\_\_\_

Title \_\_\_\_\_

- Railway Protective Services Agreement (224-078EF) *RailAgreement.fp3*

 <b>Washington State Department of Transportation</b>		<b>Railway Protective Services Agreement</b>		Railroad Company and Address	
Agreement Number				Section / Location	
State Route	Control Section				
Region	Estimated Amount \$				
Railway's Reference					

This agreement made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the STATE OF WASHINGTON, Department of Transportation, acting by and through the Secretary of Transportation, hereinafter called the "STATE", and the above named Railroad Company, hereinafter called the "RAILWAY".

WHEREAS, the STATE desires to construct the above described improvements at the referenced location, and

WHEREAS, it is deemed to be in the best public interest for the RAILWAY, as owners of the track or tracks, to perform flagging or other protective services as necessary to assure safety of the RAILWAY operations during the construction of the states project, and

WHEREAS, the STATE is obligated to reimburse the RAILWAY for all or part of the cost incurred by the RAILWAY in undertaking specific work as herein described.

NOW THEREFORE, in consideration of the terms, conditions, covenants and performances contained herein, or attached and incorporated and made a part hereof, IT IS MUTUALLY AGREED AS FOLLOWS:

<p style="text-align: center;"><b>I GENERAL</b></p> <p>           This AGREEMENT will be governed by the applicable sections of Title 23, U.S. Code, Highways; Federal-Aid Policy Guide; and amendments thereto. These references are incorporated hereby and made a part of this AGREEMENT for all intents and purposes as if fully set forth herein.         </p> <p style="text-align: center;"><b>II WORK TO BE PERFORMED</b></p> <p>           The STATE and/or its contractor will perform the work noted above under section/location and as shown on the site plan labeled Exhibit "B", attached hereto and by this reference made a part of this AGREEMENT.         </p> <p>           The RAILWAY hereby grants the STATE permission to enter upon the RAILWAY's property for the purpose of performing said work.         </p>	<p style="text-align: center;"><b>III PROTECTIVE SERVICES</b></p> <p>           All work herein provided for to be done by the STATE or its contractors, on the RAILWAY's right of way, shall be performed by the STATE or its contractors in such a manner as not to interfere with the movement of trains or traffic upon the tracks of the RAILWAY. The STATE or its contractors shall use all care and precaution necessary to avoid accident, damage, or interference to the RAILWAY's tracks or to the trains or traffic using its tracks and notify the RAILWAY a sufficient time in advance whenever it is about to perform work adjacent to any track to enable the RAILWAY to furnish flagging and such other protective services and devices as might be necessary to ensure safety of railway operations, and the RAILWAY shall have the right to furnish all such flagging or protective services and devices as in its judgement are necessary, and the STATE shall reimburse the RAILWAY for the cost thereof. Whenever safeguarding of trains or traffic of the RAILWAY is mentioned in this AGREEMENT, it is intended to cover and include all users of the RAILWAY's tracks having permission for such use.         </p>
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DOT Form 224-078 EF  
Revised 11/96

#### **IV PAYMENT**

The STATE, in consideration of the faithful performance of the protective services work to be done by the RAILWAY, agrees to pay the RAILWAY actual direct and related indirect costs accumulated in accordance with a work order accounting procedure as prescribed and approved by the ICC Uniform System of Accounts, or its equivalent.

An itemized estimate of cost for the work to be performed by the RAILWAY at the STATE's expense is shown on Exhibit "A," attached hereto and by this reference made a part of this AGREEMENT.

Following the execution of this AGREEMENT, progress bills may be submitted to the STATE to cover costs incurred and the STATE shall pay such progress billings promptly upon receipt. Progress bills are not to be submitted more frequently than one (1) per month.

The RAILWAY will submit a final billing for flagging and other protective services and devices within one hundred twenty (120) days after notification by the STATE of completion of the project, said one hundred twenty (120) days to commence upon receipt, by the RAILWAY, of said notification of completion of the project.

It is agreed that payment of any billing will not constitute agreement as to the appropriateness of any item and that at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the RAILWAY, the RAILWAY agrees to refund such overpayment to the STATE.

During the progress of construction and for a period not less than three years from the date of final payment to the RAILWAY, the records and accounts pertaining to the construction of the project and accounting therefore are to be kept available for inspection and audit by the STATE and/or Federal Government and copies of all records, accounts, documents or other data pertaining to the project will be furnished upon request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claim or audit finding has been resolved even though such litigation, claim or audit continues past the three-year retention period.

#### **V INSURANCE**

The contract between the STATE and its contractor for construction work herein provided, if any, shall require the contractor to protect and hold harmless the RAILWAY and any other railroad company occupying or using the RAILWAY's right of way or line of railroad against all loss, liability and damage arising from activities of the contractor, its forces or any of its subcontractors or agents. Such indemnity provision shall be in accordance with RCW 4.24.115 as amended by Ch. 305, Laws of 1986. The contract shall further provide that the contractor shall:

1. Furnish to the RAILWAY a Railroad Protective Insurance Policy with the combined single limit of not less than Two Million Dollars (\$2,000,000) for all damages arising out of bodily injuries to or death of any person or persons and for all damages arising out of the loss or destruction of or injury or damage to property in any one occurrence during the policy period, and subject to that limit a total (or aggregate) limit of not less than Six Million Dollars (\$6,000,000) for all damages during the policy period. Said insurance policy is to be executed by a corporation qualified to write the same in the STATE in which the work is to be performed, shall be in the form and substance satisfactory to the RAILWAY and shall be delivered to and approved by the RAILWAY prior to the entry upon or use of its property by the contractor.

2. Carry regular Contractor's Public Liability and Property Damage Insurance providing for a limit of not less than One Million Dollars (\$1,000,000) for all damages arising out of bodily injuries to or death of one person, and subject to that limit for each person, a total limit of not less than Two Million Dollars (\$2,000,000) for all damages arising out of bodily injuries to or death of two or more persons in any one occurrence; and providing for a limit of not less than One Million Dollars (\$1,000,000) for all damages to or destruction of property in any one occurrence and subject to that limit a total (or aggregate) limit of not less than Two Million Dollars (\$2,000,000) for all damages to or destruction of property during the policy period. A certificate of insurance providing proof of contractor's Public Liability and Property Damage Insurance, executed by a corporation qualified to write the same in the State of Washington and in form and substance satisfactory to the RAILWAY, shall be delivered to and approved by the RAILWAY prior to the entry upon or use of the RAILWAY's property by the contractor.

If the STATE, its contractor, subcontractors or agents, in the performance of the work herein provided for or by the failure to do or perform anything for which it is responsible under the provisions hereof, shall damage or destroy any property of the RAILWAY, such damage or destruction shall be corrected by the STATE in the event its contractor or the insurance carriers fail to repair or restore the same.

For any work performed in the State of Washington, nothing in this AGREEMENT is intended to be construed as a requirement for an indemnification against the sole negligence of the Railway, its officers, employees or agents. Moreover, for any work performed in the State of Washington, the contractor shall specifically and expressly agree to indemnify the Railway and any other railroad company occupying or using the Railway's right-of-way or line of railroad against all loss, liability and damages, including environmental damage, hazardous materials damage, or penalties of fines that maybe assessed, caused by or resulting from the contractor's negligence, provided, however, if such loss, liability, damage, penalties or fines are caused by or result from the concurrent negligence of (a) the Railway or the Railway's officers, employees or agents, and (b) the

contractor or the contractor's employees, agents or subcontractors, such indemnity shall be valid and enforceable only to the extent of the negligence of the contractor or the contractor's employees, agents or subcontractors.

The contractor shall further agree that it has a duty to defend at its own expense, in the name and on behalf of the Railway, all claims or suits for injuries or death of persons or

damage to property arising or growing out of the work carried on under this agreement, for which the Railway is liable or is alleged to be liable. However, upon a final determination in court of law in which a percentage of negligence is attributed to the Railway, the Railway agrees to reimburse the contractor in the same percentage for the cost involved in defending the suit.

This AGREEMENT shall inure to the benefit of and be binding on the parties hereto, their successors and assigns.

Except as modified by this agreement, the original agreement of \_\_\_\_\_, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT as of the day and year first above written.

**Railway**

**State of Washington  
Department of Transportation**

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

ANY MODIFICATION, CHANGE OR REFORMATION of this Boilerplate Agreement shall require approval as to form by the Office of the Attorney General.

DOT Form 224-078 EF  
Revised 11/96

- Railroad Preliminary Engineering Agreement (224-079)

**Railroad Preliminary Engineering Agreement**

Standard Form



- Highway - Railroad Grade Crossing Lump Sum Agreement (224-081)

**Highway - Railroad Grade Crossing Lump Sum Agreement**

Standard Form

- Highway - Railroad Grade Crossing Diagnostic Team Review (224-088)

**Highway - Railroad Grade Crossing Lump Sum Agreement**

Standard Form

### 3.11 SF - Title Insurance

#### **Description**

SF agreements are blanket agreements with title insurance companies for title insurance service. These agreements are usually for a specified period of time unless canceled by either party.

#### **When Used**

Title insurance agreements are for obtaining title reports and title insurance. Title reports and/or title insurance are necessary when right of way is needed on a highway project.

#### **Why Used**

#### **Agreement Check List**

#### **Standard Form Agreement**

None found

#### **Support Documentation**

##### *References*

#### **Management**

##### *Executed by:*

Assistant Secretary for Environmental & Engineering (ID 01-01, IV.C.16) with further delegation to the Director of Real Estate Services (11-23-94 Memo)

##### *Agreement Closure*

##### *Audit of Agreement*

An audit may be required if the agreement is in excess of \$100,000 or an audit may be requested for any reason.

##### *Supplementing Agreement*



## 3.12 Sx - Utility Service Agreement

### **Description**

A service agreement is used when WSDOT needs a utility service (water, power, sewer, etc.). Service agreements may or may not have a cost associated with them.

### **When Used**

A Utility Service Agreement is used whenever WSDOT needs a utility service for a highway project or facility.

### **Or**

When the department requires a service on a state highway due to a utility installation by a local agency or because of contractor/developer mitigation work.

The service may become WSDOT's responsibility following completion by the entity and acceptance of construction by the department.

### **Why Used**

A service agreement documents the scope of work and the costs associated with a utility service installation. It also provides a method for the inventory and tracking of the utility services within each maintenance area. Each region shall establish their own process for ordering and managing utility service accounts.

**Agreement Check List** For process and procedures of a service agreement, please refer to the *Utilities Manual* (M 22-87)

### **Agreement Format**

Agreement formats can vary depending upon the particular circumstances of the proposed installation. A service agreement package must contain the information necessary to arrange for the delivery of a particular utility service as well as document the costs that are likely to be associated with the installation. Many utilities have their own form that must be filled out to establish new service. That form, accompanied with acceptance of the costs associated, can constitute a service agreement.

For an example of an agreement format that may be used, please refer to the *Utilities Manual*.

### **Support Documentation**

#### ***References***

For a list of references pertaining to service agreements, please refer to the *Utilities Manual*.

## **Management**

### ***Executed by:***

- Assistant Secretary for Field Operations Support (ID 01-01, IV.B.2) with further delegation authorized;
- Assistant Secretary for Environmental & Engineering (ID 01-01, IV.C.6) with further delegation to the State Design Engineer (3-1-96 Memo); and
- Director, Washington State Ferries (ID 01-01, IV.F.4) with further delegation authorized.

### **Agreement Closure**

For process and procedure of a service agreement, please refer to the *Utilities Manual*.

### **Audit of Agreement**

There are no formal procedures in place to audit the service agreement. However, if an estimate provided by the utility is higher than anticipated or just does not seem right, the region Utility Engineer can request an audit on a case-by-case basis from the WSDOT Audit Office. Once an agreement is final and the installation bill is higher than the estimate provided by the utility, the Project Engineer can also ask for an audit by the WSDOT Audit Office.

### **Supplementing Agreement**

For process and procedure of supplementing a service agreement, please refer to the *Utilities Manual*.

### 3.13 TB - Turnback

#### Description

An Turnback Agreement is used for the transfer of jurisdiction of operating right of way and nonoperating property from WSDOT to a city, town, or county.

#### When Used

This agreement is used for the relinquishment of frontage roads or streets that have been constructed or reconstructed due to a WSDOT project.

Use a turnback agreement for the certification/turnback of a section of a former state highway route, for example, following construction of a bypass route around a city, the old route through the city will be transferred to the city when construction of the bypass is completed.

This agreement is also used for the certification/jurisdictional transfer of a former section of state highway that has been removed from the state highway system based on criteria in RCW 47.71.001 to a local agency.

#### Agreement Check List

### Relinquishment

The department constructs new frontage roads and other local streets and roads , or reconstructs existing local streets and roads, to reduce impacts or mitigate damages. These streets and roads are constructed or reconstructed to standards equal to or greater than those used by the local agency within whose jurisdiction the facilities lie.

#### ☐ Approval

During the design stage, the department will obtain local agency approval of the plan for reconstruction. As an integral part of the approval, appropriate recognition and commitment of local responsibility for accepting jurisdiction over local streets and roads reconstructed under the plan shall be identified by formal agreement prior to acquisition of any additional right of way. The recognition shall include definition and division of maintenance and operating responsibility.

Upon notification by a local agency of a refusal to accept jurisdiction of the streets and roads to be constructed as part of a limited access facility, right of way acquisition shall not proceed until the Secretary of Transportation has determined these facilities are so necessary to the public interest that they are required and shall remain under department jurisdiction.

#### ☐ Region

- ☐ Ensure that an informal agreement is reached with the local agency prior to hearings for roads to be constructed or reconstructed.
- ☐ Request that the Project Development Engineer obtain approval of the Secretary of Transportation to construct those local facilities over which the local agency will not accept jurisdiction.

☐ **OSC - Project Development Engineer**

- ☐ Obtain approval from the Secretary of Transportation to construct those facilities over which the local agency will not accept jurisdiction (limited access highway). Advise the Regional Administrator.

☐ **Agreement Preparation**

The department considers that newly constructed streets and roads, as discussed under RELINQUISHMENT, should come under the jurisdiction and responsibility of the local agency at the time of completion of construction.

Prior to right of way acquisition, the department will formally request that the local agency acknowledge the plan for newly constructed streets and roads and agree to accept jurisdiction over these facilities upon completion of construction. These acknowledgments shall be formalized by executed agreement.

☐ **Region**

- ☐ Ensure that a formal agreement is reached for relinquishment of newly constructed or reconstructed local streets and roads prior to right of way acquisition.
- ☐ Prepare the appropriate standard form agreement
  - ☐ County Turnback Agreement (224-056EF)
  - ☐ City/Town Turnback Agreement (224-057EF)
- ☐ Complete required information on page one of the standard form agreement including:
  - ☐ Local agency name and address
  - ☐ Section of highway - using right of way plan sheet title
  - ☐ Location - using construction title
  - ☐ SR number
  - ☐ Control section
  - ☐ Region
  - ☐ Agreement number - TB followed by the region number, hyphen, and then a four digit numerical sequence number (for example, TB 5-0026. Agreement number 26 in the South Central Region). See Agreement Numbering in 1-4 Definitions/Glossary.
- ☐ WSDOT's official right of way plans, if available, should be used as an exhibit. If not available, the access report plan or design report plan may be used.

The plan used must be revised to accurately show and describe the areas being certified so that a legal description may be prepared as part of the conveyance instrument.



Care must be taken not to obliterate any of the details shown on the exhibit by the addition of the exhibit stamp, color designations, or other markings.

- ☐ Forward one copy of the proposed agreement to the Chief Right of Way Agent for review and approval.
- ☐ Enter a record file on all turnback agreements initiated by the region in the statewide status report system format.
- ☐ **OSC - Chief Right of Way Agent**
  - ☐ **Standard Form Agreement** - Review to ensure that all blanks have been completed.

Review exhibits for:

    - Current plan
    - Turnback lines and notes
    - Color designations
    - Sufficient plan detail to allow preparation of a legal description
    - Assurance that property rights for transfer have been acquired by the state
  - ☐ **Nonstandard Agreement** - Requires review and concurrence by the OSC Utilities Section, Contracts Unit, and approval as to form by the Attorney General's Office

Review exhibits for:

    - Current plan
    - Turnback lines and notes
    - Color designations
    - Sufficient plan detail to allow preparation of a legal description
    - Assurance that property rights for transfer have been acquired by the state
  - ☐ Incorporate the record of agreement into a statewide status report system. Publish a report including the current status of all turnback actions from the time the agreements are initially received from the Regional Administrator to the time conveyance documents are transmitted to the local agency. Distributed an updated copy of the status report to each Regional Administrator quarterly.
  - ☐ Return comments and/or approval to the Regional Administrator.
- ☐ **Region**
  - ☐ Address comments, if any, and resubmit for Chief Right of Way Agent's approval.

## ☐ **Execution**

The department executes the agreement prior to advertising for construction of the new route.

### ☐ **Region**

- ☐ Following approval of the Chief Right of Way Agent, submit the agreement to the local agency for signature.
- ☐ Execute the agreement on behalf of WSDOT. An executed copy of the agreement is to be retained in the region as the WSDOT file.
- ☐ Advertise the project and carry out construction of the new facility. Additions and/or deletions to the right of way plans form contained in the agreement that affect the turnback area require a right of way plan revision and supplemental agreement covering the changes.

## ☐ **Conveyance of Title**

The responsibility for management of access control is inherent to the operation and maintenance of any roadway; hence, the authority for the management of access control will be released to the local agency when the jurisdiction of the roadway is released. Exceptions to this will be approved on a case-by-case basis by the Project Development Engineer.

### ☐ **Region**

- ☐ Upon completion of the new facility, arrange for a joint inspection by representatives of WSDOT and the local agency to ensure that all work has been completed according to the plans and in conformity with the agreement. Correct any noted deficiencies.
- ☐ Submit a letter (by certified mail with return receipt) to the local agency advising that effective as of a specific date the Department of Transportation is transferring jurisdiction to the local agency in accordance with the terms and conditions of the turnback agreement (number) executed on (date).

The letter transferring jurisdiction will be mailed only after receipt of the following:

- Fully executed agreement.
- Local agency letter accepting the right of way covered by the agreement in its present condition, or appropriate action taken as the result of a decision by the Secretary of Transportation.

Request that the Chief Right of Way Agent, as the recipient of a copy of the letter going to the local agency, prepare and transmit the appropriate conveyance documents to the local agency. The region's request will be accompanied with a copy of the following:

- Fully executed agreement

- Local agency letter of acceptance or decision of the Secretary of Transportation
- ☐ Following transfer of jurisdiction, provide the local agency with all available maps, permits, franchises, and other documents, including bridge and structure plans, calculations, and inspection and construction records that may relate to that portion of highway transferred.
- ☐ **OSC - Chief Right of Way Agent**
  - ☐ Within six months following transfer of jurisdiction, prepare and transmit conveyance documents to the local agency.
- ☐ **Region**
  - ☐ Maintain a record of all turnback agreements initiated and completed by the region.
  - ☐ Retain an executed copy of the agreement in the region.

## **Certification**

WSDOT releases jurisdiction of a former highway or segment of highway to the local agency upon completion of a new route and its opening to public use.

### **Or**

WSDOT will release jurisdiction of a segment of state highway that has been identified as no longer being needed based on specified criteria. See the Highways and Local Programs Handbook for Transfer of Routes.

## ☐ **Negotiation**

Agreements are negotiated with the local agency, with negotiations taking place during the location, design, or access plan phases of project development involving the new route.

- ☐ **Region**
  - ☐ Field review
    - ☐ Regional Maintenance & Operations Engineer
    - ☐ Local Agency Engineer or representative
  - ☐ Identify roadway deficiencies to be corrected prior to certification
  - ☐ Identify areas to be transferred
  - ☐ Identify properties and property rights not necessary for the maintenance and operation of the facility being transferred

## ☐ **Agreement Preparation**

- ☐ **Region**
  - ☐ Prepare the appropriate standard form agreement

- ☐ County Turnback Agreement (224-056EF)
- ☐ City/Town Turnback Agreement (224-057EF)
- ☐ Complete required information on page one of the standard form agreement including:
  - ☐ Local agency name and address
  - ☐ Section of highway - using right of way plan sheet title
  - ☐ Location - using construction title
  - ☐ SR number
  - ☐ Control section
  - ☐ Region
  - ☐ Agreement number - TB followed by the region number, hyphen, and then a four digit numerical sequence number (for example, TB 5-0026. Agreement number 26 in the South Central Region) See Agreement Numbering in 1-4 Definitions/Glossary.
- ☐ WSDOT's official right of way plans, if available, should be used as an exhibit. If not available, the access report plan or design report plan may be used.
 

The plan used must be revised to accurately show and describe the areas being certified so that a legal description may be prepared as part of the conveyance instrument.

Care must be taken not to obliterate any of the details shown on the exhibit by the addition of the exhibit stamp, color designations, or other markings.
- ☐ Turnback agreements involving abandonment of a state highway are to include an enumerated list of deficiencies that will be corrected by the state prior to acceptance of the facility by the local agency. The detailed list shall be made a part of the turnback agreement by reference.
 

Since negotiations will occur early in the design phase of the new facilities, some items may require identification that cannot be resolved prior to agreement execution. The agreement will also include a list covering those items, if any, to be agreed upon at a later date.
- ☐ Forward one copy of the proposed agreement to the Chief Right of Way Agent for review and approval.
- ☐ Enter a record file on all turnback agreements initiated by the region in statewide status report system format.
- ☐ **OSC - Chief Right of Way Agent**
  - ☐ **Standard Form Agreement** - Review to ensure that all blanks have been completed.

Review exhibits for:

- Current plan
- Turnback lines and notes
- Color designations
- Sufficient plan detail to allow preparation of a legal description
- Assurance that property rights for transfer have been acquired by the state

- ☐ **Nonstandard Agreement** - Requires review and concurrence by the OSC Utilities Section, Contracts Unit, and approval as to form by the Attorney General's Office.

Review exhibits for:

- Current plan
- Turnback lines and notes
- Color designations
- Sufficient plan detail to allow preparation of a legal description
- Assurance that property rights for transfer have been acquired by the state

- ☐ Incorporate a record of the agreement into the statewide status report system. Publish a report including the current status of all turnback actions from the time agreements are initially received from the Regional Administrator to the time conveyance documents are transmitted to the local agency. Distribute an updated copy of the status report to each Regional Administrator quarterly.

- ☐ Return comments and/or approval to the Regional Administrator.

- ☐ **Region**

- ☐ Address comments, if any, and resubmit for the Chief Right of Way Agent's approval.

- ☐ **Execution**

The department executes the agreement prior to advertising for construction of the new route.

- ☐ **Region**

- ☐ Following approval of the Chief Right of Way Agent, submit the agreement to the local agency for signature.
- ☐ Execute the agreement on behalf of WSDOT. An executed copy of the agreement is to be retained in the region as the WSDOT file.

- ☐ Advertise the project and carry out construction of the new facility. This will include correction of any deficiencies identified during the first field review with the local agency and included in the agreement.

#### ☐ **Conveyance of Title**

The department will convey its entire legal interest in the former highway, together with notification of any known encumbrances affecting the facilities, to the local jurisdiction no later than six months after the transfer to local responsibility.

At the time of conveyance of title to streets and roads, the department will also convey title to those nonoperating properties considered necessary to the continued maintenance and operation of the former highway but no longer necessary for the operation and maintenance of the state transportation system. These may include, but are not limited to, stockpile sites, maintenance sites, easements, etc.),

The department continues routine maintenance on the former route at a level comparable to other state routes until it is certified to the local agency.

The responsibility for management of access control is inherent to the operation and maintenance of any roadway; hence, the authority for the management of access control will be released to the local agency when the jurisdiction of the roadway is released. Exceptions to this will be approved on a case-by-case basis by the Project Development Engineer.

#### ☐ **Region**

- ☐ Upon completion of the new facility, or prior to completion if appropriate, (for example, state construction), the region shall arrange for a second joint maintenance inspection by representatives of WSDOT and the local agency to ensure that work designated in the agreement has been completed.
- ☐ The region will agree with the local agency on items not agreed to previously.
- ☐ Upon completion of any work agreed upon, the region shall inform the local agency by letter that all deficiencies noted have been corrected, and require the local agency to accept the highway in accordance with the agreement.
- ☐ The local agency shall subsequently inform the Regional Administrator by letter that the road or highway to be certified is either:
  - a) In a condition acceptable to the local agency, or
  - b) In a condition not acceptable to the local agency, in which case the unacceptable conditions shall be enumerated in detail.
- ☐ In the event that the Regional Administrator feels that additional maintenance work is required, he shall direct such work to be done and

again follow the procedure of sending a letter stating corrections have been made. The local agency shall inform the region by letter of their acceptance or nonacceptance of the corrections.

- ☐ In the event it becomes impossible for the region and the local agency to reach agreement, a full report of the inspection and the apparent points of disagreement shall be transmitted to the Project Development Engineer with recommendations.

☐ **OSC - Project Development Engineer**

- ☐ In the event an agreement cannot be reached between the local agency and the Regional Administrator on items previously agreed upon, consult with the State Maintenance and Operations Engineer and the local agency and provide the Secretary of Transportation with all significant information. The Secretary will take final action and the local agency shall be provided with a copy of his decision at least two weeks before the certification is made.

☐ **Region**

- ☐ Submit a letter (by certified mail with return receipt) to the local agency advising that the Department of Transportation is transferring jurisdiction to the local agency effective as of a specific date in accordance with the terms and conditions of the turnback agreement (number) executed on (date).

The letter transferring jurisdiction should be mailed only after receipt of the following:

- Fully executed agreement.
- Local agency letter accepting the right of way covered by the agreement in its present condition, or appropriate action taken as the result of a decision by the Secretary of Transportation.

Request that the Chief Right of Way Agent, as a recipient of a copy of the letter going to the local agency, prepare and transmit the appropriate conveyance documents to the local agency. The region's request will be accompanied by a copy of the following:

- Fully executed agreement
- Local agency letter of acceptance or decision of the Secretary of Transportation.

- ☐ Following transfer of jurisdiction, provide the local agency with all available maps, permits, franchises, and other documents, including bridge and structure plans, calculations, and inspection and construction records that may relate to that portion of highway transferred.

☐ **OSC - Chief Right of Way Agent**

- ☐ Within six months following transfer of jurisdiction, prepare and transmit conveyance documents to the local agency.
- ☐ **Region**
  - ☐ Maintain a record on all turnback agreements initiated and completed by the region.

### **Standard Form Agreement**

The following standard agreement forms are available as a FileMaker Pro file (TurnbackAgreements.fp3):

*County Turnback Agreement (224-056EF),*

*City/Town Turnback Agreement (224-057EF),*

*County Turnback Agreement - Relinquishment - Roads Previously Constructed (224-058EF), and*

*City/Town Turnback Agreement - Relinquishment - Streets Previously Constructed (224-059EF)*

See the sample agreements at the end of this chapter.

### **Support Documentation**

#### ***References***

- RCW 36.75 Streets-Classification and Design Standards
- RCW 47.12 Acquisition and Disposition of State Highway Property
- RCW 47.17.001 Public Highways and Transportation; State Highway Routes; Criteria for changes to system
- RCW 47.24 City Streets as Part of State Highways
- RCW 47.52.210 Limited Access Facilities
- WAC 468-18-040 Design Standards for Rearranged County Roads, Frontage Roads, Access Roads, Intersections, Ramps and Crossings
- WAC 468-18-050 State Aid—Policy on the Construction, Improvement and Maintenance of Intersections of State Highways and City Streets
- WAC 468-30-070 Department of Transportation; Highway Property; Procedure for transfer of abandoned state highways to counties
- WAC 468-30-075 Department of Transportation; Highway Property; Procedure for transfer of abandoned state highways to cities and towns



- Commission Resolution No 1778      Design Standards for Rearranged County Roads, Frontage Roads, Access Roads, Intersections, Ramps and Crossings (codified as WAC 468-18-040)
- Commission Resolution No 1779      Procedure for Transfer of Abandoned State Highways to Counties (codified as WAC 468-30-070)

## **Management**

### ***Executed by:***

Assistant Secretary for Environmental & Engineering (ID 01-01, IV.C.44) with further delegation to the State Design Engineer (3-1-96 Memo)

### ***Agreement Closure***


These types of agreements are not closed, but do require that certain actions take place upon completion of construction of the project.

### ***Audit of Agreement***

Audits are not normally conducted for this type of agreement.

### ***Supplementing Agreement***

- County Turnback Agreement (224-056EF) *TurnbackAgreements.fp3*

 <b>Washington State Department of Transportation</b>			Organization and Address
<b>County Turnback Agreement</b>			
Agreement Number <b>TB</b>			Section / Location
State Route	Control Section	Region	

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, between the STATE OF WASHINGTON, Department of Transportation, acting by and through the Secretary of Transportation, hereinafter called the "STATE," and the above named organization, hereinafter called the "COUNTY."

WHEREAS, the STATE is planning the construction or improvement of a section of state route as shown above, and

WHEREAS, the STATE will abandon a portion of an existing state highway and/or construct, reconstruct, or rearrange certain county roads, frontage roads, access roads, intersections, ramps, crossings, and/or other pertinent features, and

WHEREAS, construction of this facility including rearranged county roads and other features will necessitate the transfer of jurisdiction from the COUNTY to the STATE of those rights of way, and

WHEREAS, upon completion of construction of this facility, it is necessary to describe the division of responsibility of the STATE and COUNTY in the ownership, maintenance, and reconstruction of this roadway and other features, and provide for the transfer of rights accordingly.

NOW THEREFORE, by virtue of Title 36.75.090 and pursuant to WAC 468-18-040, "Design standards for rearranged county roads, frontage roads, access roads, intersections, ramps and crossings," WAC 468-30-070, "Procedure for transfer of abandoned state highways to counties," and in consideration of the terms, conditions, covenants, and performance contained herein or attached and incorporated and made a part hereof. IT IS MUTUALLY AGREED AS FOLLOWS:

**I  
COUNTY RIGHT OF WAY**

The COUNTY agrees to deed to the STATE all COUNTY rights of way needed for the construction of this facility. Prior to commencement of construction, the STATE will notify the COUNTY in writing that it will assume jurisdiction and relieve the COUNTY from all responsibility in the operation, maintenance, and reconstruction thereon until construction is complete.

**II  
ABANDONED STATE HIGHWAY**

If a public highway which is or has been a part of the route of a state highway and is not longer necessary as such is to be certified to the COUNTY, it will be included in the plans marked Exhibit "A," attached hereto and by this reference made a part of this AGREEMENT.

In those cases involving abandonment of a state highway, a joint maintenance inspection by representatives of the STATE and COUNTY shall be held prior to entering into this AGREEMENT and all agreed to deficiencies, if any, shall be enumerated in detail and included as part of Exhibit "A."

**III  
COMPLETION INSPECTION**

Upon completion of construction of the facilities covered by this AGREEMENT, an inspection by representatives of the STATE and COUNTY shall be made to determine that the requirements of this AGREEMENT have been fulfilled.

The COUNTY, following satisfactory completion of the joint inspection, will provide the STATE a letter agreeing to accept the facilities covered by this AGREEMENT in their present condition.

**IV  
TRANSFER OF JURISDICTION**

Subsequent to the completion of construction, opening to public use, and receipt of the COUNTY's letter of acceptance, the STATE will notify the COUNTY in writing of its intent to transfer jurisdiction of these features as shown on the attached plans marked Exhibit "A." The COUNTY agrees to accept said abandoned highway, rearranged county roads, frontage roads, cul-de-sacs, and other features, including right of way,

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Revised 3/97

access control, and other property rights, and to relieve the STATE from all responsibilities in the operation, maintenance, and reconstruction of these features. Exhibit "A" is colored, wherever applicable as follows:

- Red** Indicates construction and rights of way to be conveyed to the COUNTY
- Blue** Indicates easements to be conveyed to the COUNTY.
- Yellow** Indicates nonoperating properties to be conveyed to the COUNTY. These properties are considered necessary for the continued maintenance of the areas shown in red and/or blue color.
- Green** Indicates areas within the highway right of way to be maintained and reconstructed by the COUNTY. Except for snow and ice removal, maintenance and reconstruction of the separation structures shall be the responsibility of the STATE.
- Orange** Indicates access control and access rights to be conveyed to the COUNTY. These rights may be maintained or disposed of by the COUNTY and any revenue resulting from said disposal shall be placed in the COUNTY's road fund and used exclusively for road purposes.
- Brown** Indicates access control and access rights to be conveyed to the COUNTY. These rights shall be maintained by the COUNTY and will not be transferred, sold, abandoned, vacated, or otherwise altered or disposed of without prior written approval of the STATE.

#### **V CONVEYANCE**

Within six months following the notice to transfer jurisdiction, the STATE will furnish the COUNTY a recordable conveyance of those features shown in

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT on the day and year first above written.

COUNTY

By \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date \_\_\_\_\_

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red, blue, yellow, orange, and/or brown color on the plans marked Exhibit "A". The conveyance will be recorded pursuant to RCW 65.08.095.

The forthcoming instrument will be subject to the following restrictions:

#### **(NO FEDERAL PARTICIPATION)**

It is understood and agreed that the above-referenced property is transferred for road/street purposes only, and no other use shall be made of said property without obtaining prior written approval of the grantor. Revenues resulting from any vacation, sale, or rental of this property, or any portion thereof, shall be placed in the grantee's road/street fund and used exclusively for road/street purposes, except that the grantee may deduct the documented direct costs of any such vacation, sale, or rental.

#### **(FEDERAL PARTICIPATION)**

It is understood and agreed that the above referenced property is transferred for road/street purposes only, and no other use shall be made of said property without the prior written approval of the grantor. It is also understood and agreed that the grantee, its successors or assigns, shall not revise either the right of way lines or the access control without prior written approval from the grantor, its successors, or assigns. Revenues resulting from any vacation, sale, or rental of this property or any portion thereof, shall: (1) if the property is disposed of to a governmental entity for public use, be placed in the grantee's road/street fund and used exclusively for road/street purposes; or (2) if the property is disposed of other than as provided in (1) above, be shared by the grantee and grantor, their successors or assigns in the same proportion as acquisition costs were shared, except that the grantee may deduct the documented direct costs of any such vacation, sale, or rental.


#### **VI LEGAL RELATIONS**

No liability shall attach to the STATE or COUNTY by reason of entering into this AGREEMENT except as expressly provided herein.

STATE OF WASHINGTON  
DEPARTMENT OF TRANSPORTATION

By \_\_\_\_\_  
Region Administrator

- City/Town Turnback Agreement (224-057EF) *TurnbackAgreements.fp3*

 <b>Washington State Department of Transportation</b>			<b>City/Town Turnback Agreement</b>		Organization and Address
Agreement Number <b>TB</b>			Section / Location		
State Route	Control Section	Region			

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between the STATE OF WASHINGTON, Department of Transportation, acting by and through the Secretary of Transportation, hereinafter called the "STATE," and the above named organization, hereinafter called the "CITY".

WHEREAS, the STATE is planning the construction or improvement of a section of state route as shown above, and

WHEREAS, the STATE will abandon a portion of an existing state highway and/or construct, reconstruct, or rearrange certain city streets, frontage roads, access roads, intersections, ramps, crossings, and/or other pertinent features, and

WHEREAS, construction of this facility, including rearranged city streets and other features will necessitate the transfer of jurisdiction from the CITY to the STATE of those rights of way, and

WHEREAS, upon completion of construction of this facility it is necessary to describe the division of responsibility of the STATE and CITY in the ownership, maintenance, and reconstruction of this roadway and other features, and provide for the transfer of rights accordingly.

NOW THEREFORE, by virtue of Title 47.24.010 and 47.52.210, and pursuant to WAC 468-18-050, "Policy on the construction, improvement and maintaining of intersections of state highways and city streets," WAC 468-30-075, "Procedure for transfer of abandoned state highways to cities and towns" and in consideration of the terms, conditions, covenants, and performance contained herein or attached and incorporated and made a part hereof. IT IS MUTUALLY AGREED AS FOLLOWS:

**I**

**CITY RIGHT OF WAY**

The CITY agrees that the transfer of jurisdiction and/or ownership of all city rights of way needed for the construction of this facility shall be governed by RCW 47.24.010 and/or RCW 47.52.210. Prior to commencement of construction, the STATE will notify the CITY in writing that it will assume jurisdiction and relieve the CITY from all responsibility in the operation, maintenance, and reconstruction thereon until construction is complete.

**II**

**ABANDONED STATE HIGHWAY**

If a public highway which is or has been a part of the route of a state highway and is no longer necessary as such is to be certified to the CITY, it will be included in the plans marked Exhibit "A," attached hereto and by this reference made a part of this AGREEMENT.

In those cases involving abandonment of a state highway, a joint maintenance inspection by representatives of the STATE and CITY shall be held prior to entering into this AGREEMENT and all agreed to deficiencies, if any, shall be enumerated in detail and included as part of Exhibit "A."

**III**

**COMPLETION INSPECTION**

Upon completion of construction of the facilities covered by this AGREEMENT, an inspection by representatives of the STATE and CITY shall be made to determine that the requirements of this AGREEMENT have been fulfilled.

The CITY, following satisfactory completion of the joint inspection, will provide the STATE a letter agreeing to accept the facilities covered by this AGREEMENT in their present condition.

**IV**

**TRANSFER OF JURISDICTION**

Subsequent to the completion of construction, opening to public use, and receipt of the CITY's letter of acceptance, the STATE will notify the CITY in writing of its intent to transfer jurisdiction of these features as shown on the attached plans marked Exhibit "A". The CITY agrees to

Items of work, if any, which cannot be agreed to prior to executing this AGREEMENT, shall also be enumerated in detail and included as part of Exhibit "A."

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accept said abandoned highway, rearranged city streets, frontage roads, cul-de-sacs, and other features, including right of way, access control, and other property rights, and to relieve the STATE from all responsibilities in the operation, maintenance, and reconstruction of these features. Exhibit "A" is colored, wherever applicable, as follows:

- Red** Indicates construction and rights of way to be conveyed to the CITY.
- Blue** Indicates easements to be conveyed to the CITY.
- Yellow** Indicates nonoperating properties to be conveyed to the CITY. These properties are considered necessary for the continued maintenance of the areas shown in red and/or blue color.
- Green** Indicates areas within the highway right of way to be maintained and reconstructed by the CITY. Except for snow and ice removal, maintenance and reconstruction of the separation structures shall be the responsibility of the STATE.
- Orange** Indicates access control and access rights to be conveyed to the CITY. These rights may be maintained or disposed of by the CITY and any revenue resulting from said disposal shall be placed in the CITY's street fund and used exclusively for street purposes.
- Brown** Indicates access control and access rights to be conveyed to the CITY. These rights shall be maintained by the CITY and will not be transferred, sold, abandoned, vacated, or otherwise altered or disposed of without prior written approval of the STATE.

#### V CONVEYANCE

Within six months following the notice to transfer jurisdiction, the STATE will furnish the CITY a recordable conveyance of those features shown in red, blue, yellow,

orange, and/or brown color on the plans marked Exhibit "A". The conveyance will be recorded pursuant to RCW 65.08.095.

The forthcoming instrument will be subject to the following restrictions:

#### (NO FEDERAL PARTICIPATION)

It is understood and agreed that the above-referenced property is transferred for road/street purposes only, and no other use shall be made of said property without obtaining prior written approval of the grantor. Revenues resulting from any vacation, sale, or rental of this property, or any portion thereof, shall be placed in the grantee's road/street fund and used exclusively for road/street purposes, except that the grantee may deduct the documented direct costs of any such vacation, sale, or rental.

#### (FEDERAL PARTICIPATION)

It is understood and agreed that the above referenced property is transferred for road/street purposes only, and no other use shall be made of said property without the prior written approval of the grantor. It is also understood and agreed that the grantee, its successors or assigns, shall not revise either the right of way lines or the access control without prior written approval from the grantor, its successors, or assigns. Revenues resulting from any vacation, sale, or rental of this property or any portion thereof, shall: (1) if the property is disposed of to a governmental entity for public use, be placed in the grantee's road/street fund and used exclusively for road/street purposes; or (2) if the property is disposed of other than as provided in (1) above, be shared by the grantee and grantor, their successors or assigns in the same proportion as acquisition costs were shared, except that the grantee may deduct the documented direct costs of any such vacation, sale, or rental.

#### VI LEGAL RELATIONS

No liability shall attach to the STATE or CITY by reason of entering into this AGREEMENT except as expressly provided herein.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT on the day and year first above written.

CITY

STATE OF WASHINGTON  
DEPARTMENT OF TRANSPORTATION


By \_\_\_\_\_

By \_\_\_\_\_  
Region Administrator

Date \_\_\_\_\_

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Revised 3/97

- County Turnback Agreement - Relinquishment - Roads Previously Constructed (224-058EF)  
*TurnbackAgreements.fp3*



**Washington State  
Department of Transportation**

<b>County Turnback Agreement Relinquishment - Roads Previously Constructed</b>			Organization and Address
Agreement Number <b>TB</b>			Section / Location
State Route	Control Section	Region	

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between the STATE OF WASHINGTON, Department of Transportation, acting by and through the Secretary of Transportation, hereinafter called the "STATE," and the above named organization, hereinafter called the "COUNTY."

WHEREAS, the STATE has constructed or improved the section of state route as shown above, and

WHEREAS, the STATE has constructed, reconstructed, or rearranged certain county roads, frontage roads, access roads, intersections, ramps, crossings, and/or other pertinent features, and

WHEREAS, it is necessary to describe the division of responsibility of the STATE and COUNTY in the ownership, maintenance, and reconstruction of this roadway and other features, and provide for the transfer of rights accordingly.

NOW THEREFORE, by virtue of Title 36.75.090 and pursuant to WAC 468-18-040, "Design standards for rearranged county roads, frontage roads, access roads, intersections, ramps and crossings," and in consideration of the terms, conditions, covenants, and performance contained herein or attached and incorporated and made a part hereof. IT IS MUTUALLY AGREED AS FOLLOWS:

**I  
INITIAL INSPECTION**

A joint maintenance inspection by representatives of the STATE and COUNTY shall be held prior to entering into this AGREEMENT and all agreed to deficiencies, if any, shall be enumerated in detail and included as part of Exhibit "A", attached hereto and by this reference made a part of this AGREEMENT.

**II  
COMPLETION INSPECTION**

Upon completion of construction of the deficiencies listed on Exhibit "A", an inspection by representatives of the STATE and COUNTY shall be made to determine that the requirements of this AGREEMENT have been fulfilled.

The COUNTY, following satisfactory completion of the joint inspection, will provide the STATE a letter agreeing to accept the facilities covered by this AGREEMENT in their present condition.

**III  
TRANSFER OF JURISDICTION**

Subsequent to the receipt of the COUNTY's letter of acceptance, the STATE will notify the COUNTY in writing of its intent to transfer jurisdiction of these features as shown on the attached plans marked Exhibit "A". The COUNTY agrees to accept said rearranged county roads, frontage roads, cul-de-sacs, and other features, including right of way, access control, and other property rights, and to relieve the STATE from all responsibilities in the operation, maintenance, and reconstruction of these features. Exhibit "A" is colored, wherever applicable, as follows:

**Red**      Indicates construction and rights of way to be conveyed to the COUNTY.

**Blue**      Indicates easements to be conveyed to the COUNTY.

**Yellow**      Indicates nonoperating properties to be conveyed to the COUNTY. These properties are considered necessary for the continued maintenance of the areas shown in red and/or blue color.

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**Green** Indicates areas within the highway right of way to be maintained and reconstructed by the COUNTY. Except for snow and ice removal, maintenance and reconstruction of the separation structures shall be the responsibility of the STATE.

**Orange** Indicates access control and access rights to be conveyed to the COUNTY. These rights may be maintained or disposed of by the COUNTY and any revenue resulting from said disposal shall be placed in the COUNTY's road fund and used exclusively for road purposes.

**Brown** Indicates access control and access rights to be conveyed to the COUNTY. These rights shall be maintained by the COUNTY and will not be transferred, sold, abandoned, vacated, or otherwise altered or disposed of without prior written approval of the STATE.

#### IV CONVEYANCE

Within six months following the notice to transfer jurisdiction, the STATE will furnish the COUNTY a recordable conveyance of those features shown in red, blue, yellow, orange, and/or brown color on the plans marked Exhibit "A". The conveyance will be recorded pursuant to RCW 65.08.095.

The forthcoming instrument will be subject to the following restrictions:

#### (NO FEDERAL PARTICIPATION)

It is understood and agreed that the above-referenced property is transferred for road/street purposes only, and no other use shall be made of said property without obtaining prior written approval of the grantor. Revenues resulting from any vacation, sale, or rental of this property, or any portion thereof, shall be placed in the grantee's road/street fund and used exclusively for road/street purposes, except that the grantee may deduct the documented direct costs of any such vacation, sale, or rental.

#### (FEDERAL PARTICIPATION)

It is understood and agreed that the above referenced property is transferred for road/street purposes only, and no other use shall be made of said property without the prior written approval of the grantor. It is also understood and agreed that the grantee, its successors or assigns, shall not revise either the right of way lines or the access control without prior written approval from the grantor, its successors, or assigns. Revenues resulting from any vacation, sale, or rental of this property or any portion thereof, shall: (1) if the property is disposed of to a governmental entity for public use, be placed in the grantee's road/street fund and used exclusively for road/street purposes; or (2) if the property is disposed of other than as provided in (1) above, be shared by the grantee and grantor, their successors or assigns in the same proportion as acquisition costs were shared, except that the grantee may deduct the documented direct costs of any such vacation, sale, or rental.

#### V LEGAL RELATIONS

No liability shall attach to the STATE or COUNTY by reason of entering into this AGREEMENT except as expressly provided herein.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT on the day and year first above written.

COUNTY


By \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date \_\_\_\_\_

STATE OF WASHINGTON  
DEPARTMENT OF TRANSPORTATION

By \_\_\_\_\_  
Region Administrator

- City/Town Turnback Agreement - Relinquishment - Streets Previously Constructed (224-059EF) *TurnbackAgreements.fp3*



**Washington State  
Department of Transportation**

<b>City/Town Turnback Agreement Relinquishment - Streets Previously Constructed</b>			Organization and Address
Agreement Number  <b>TB</b>			Section / Location
State Route	Control Section	Region	

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between the STATE OF WASHINGTON, Department of Transportation, acting by and through the Secretary of Transportation, hereinafter called the "STATE," and the above named organization, hereinafter called the "CITY".

WHEREAS, the STATE has constructed or improved the section of state route as shown above, and

WHEREAS, the STATE has constructed, reconstructed, or rearranged certain city streets, frontage roads, access roads, intersections, ramps, crossings, and/or other pertinent features, and

WHEREAS, it is necessary to describe the division of responsibility of the STATE and CITY in the ownership, maintenance, and reconstruction of this roadway and other features, and provide for the transfer of rights accordingly.

NOW THEREFORE, by virtue of Title 47.24.010 and 47.52.210, and pursuant to WAC 468-18-050, "Policy on the construction, improvement and maintaining of intersections of state highways and city streets," and in consideration of the terms, conditions, covenants, and performance contained herein or attached and incorporated and made a part hereof. IT IS MUTUALLY AGREED AS FOLLOWS:

**I  
INITIAL INSPECTION**

A joint maintenance inspection by representatives of the STATE and CITY shall be held prior to entering into this AGREEMENT and all agreed to deficiencies, if any, shall be enumerated in detail and included as part of Exhibit "A", attached hereto and by this reference made a part of this AGREEMENT.

**II  
COMPLETION INSPECTION**

Upon completion of construction of the deficiencies listed on Exhibit "A", an inspection by representatives of the STATE and CITY shall be made to determine that the requirements of this AGREEMENT have been fulfilled.

The CITY, following satisfactory completion of the joint inspection, will provide the STATE a letter agreeing to accept the facilities covered by this AGREEMENT in their present condition.

**III  
TRANSFER OF JURISDICTION**

Subsequent to receipt of the CITY's letter of acceptance, the STATE will notify the CITY in writing of its intent to transfer jurisdiction of these features as shown on the attached plans marked Exhibit "A". The CITY agrees to accept said rearranged city streets, frontage roads, cul-de-sacs, and other features, including right of way, access control, and other property rights, and to relieve the STATE from all responsibilities in the operation, maintenance, and reconstruction of these features. Exhibit "A" is colored, wherever applicable, as follows:

**Red**      Indicates construction and rights of way to be conveyed to the CITY.

**Blue**      Indicates easements to be conveyed to the CITY.

**Yellow**      Indicates nonoperating properties to be conveyed to the CITY. These properties are considered necessary for the continued maintenance of the areas shown in red and/or blue color.

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**Green** Indicates areas within the highway right of way to be maintained and reconstructed by the CITY. Except for snow and ice removal, maintenance and reconstruction of the separation structures shall be the responsibility of the STATE.

**Orange** Indicates access control and access rights to be conveyed to the CITY. These rights may be maintained or disposed of by the CITY and any revenue resulting from said disposal shall be placed in the CITY's street fund and used exclusively for street purposes.

**Brown** Indicates access control and access rights to be conveyed to the CITY. These rights shall be maintained by the CITY and will not be transferred, sold, abandoned, vacated, or otherwise altered or disposed of without prior written approval of the STATE.

#### **IV CONVEYANCE**

Within six months following the notice to transfer jurisdiction, the STATE will furnish the CITY a recordable conveyance of those features shown in red, blue, yellow, orange, and/or brown color on the plans marked Exhibit "A". The conveyance will be recorded pursuant to RCW 65.08.095.

The forthcoming instrument will be subject to the following restrictions:

#### **(NO FEDERAL PARTICIPATION)**

It is understood and agreed that the above-referenced property is transferred for road/street purposes only, and no other use shall be made of said property without obtaining prior written approval of the grantor. Revenues resulting from any vacation, sale, or rental of this property, or any portion thereof, shall be placed in the grantee's road/street fund and used exclusively for road/street purposes, except that the grantee may deduct the documented direct costs of any such vacation, sale, or rental.

#### **(FEDERAL PARTICIPATION)**

It is understood and agreed that the above referenced property is transferred for road/street purposes only, and no other use shall be made of said property without the prior written approval of the grantor. It is also understood and agreed that the grantee, its successors or assigns, shall not revise either the right of way lines or the access control without prior written approval from the grantor, its successors, or assigns. Revenues resulting from any vacation, sale, or rental of this property or any portion thereof, shall: (1) if the property is disposed of to a governmental entity for public use, be placed in the grantee's road/street fund and used exclusively for road/street purposes; or (2) if the property is disposed of other than as provided in (1) above, be shared by the grantee and grantor, their successors or assigns in the same proportion as acquisition costs were shared, except that the grantee may deduct the documented direct costs of any such vacation, sale, or rental.

#### **V LEGAL RELATIONS**

No liability shall attach to the STATE or CITY by reason of entering into this AGREEMENT except as expressly provided herein.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT on the day and year first above written.

CITY

STATE OF WASHINGTON  
DEPARTMENT OF TRANSPORTATION

By \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_  
Region Administrator

Date \_\_\_\_\_



### 3.14 UC - Private Sector

#### **Description**

A Private Sector or Developer Agreement is an agreement between a property owner and WSDOT that allows for construction to be performed on state right of way.

#### **When Used**

An agreement is required when work is done within state right of way by a developer or by WSDOT at a developer's expense (or partial expense). This is work for highway purposes involving construction of a structure or appurtenance (excluding utilities) that cannot readily be removed from the right of way and/or where construction effects permanent traffic pattern changes, for example, bridges, retaining walls, at-grade intersections, street widening, channelization, etc. Due to the potential complexity of Category II and Category III connection proposals and required mitigation measures that may involve construction on the state highway, WSDOT may require a developer agreement in addition to a construction permit. Access connection categories are defined in WAC 468-51-040.

#### **Why Used**

WSDOT is responsible for the integrity of the highway system, including access to and from the roadway. Responsibilities for access management are defined in Chapter 47.50 RCW and Chapters 468-51, 468-52 & 468-58 WAC.

#### **Agreement Check List**

#### **Standard Form Agreement**

The following standard agreement forms are available as a FileMaker Pro file (DeveloperAgreements.fp3):

*Developer Agreement - Construction by Developer at Developer Expense (224-054EF),*

*Developer/Local Agency Agreement - Construction by Developer at Developer Expense (224-063EF), and*

*Developer Agreement - Construction by State at Developer Expense (224-064EF)*

See the sample agreements at the end of this chapter.

Any direct or indirect alteration, addition, or deletion to the preprinted standard form, or use of a handwritten agreement, will require approval as to form by the Attorney General's Office through the OSC Utilities Section. The Attorney General's Office will review the agreement for compliance with applicable state law and policy and either approve the agreement or return the agreement unsigned to the OSC Utilities Section with comments.

## **Support Documentation**

### ***References***

WAC 468-51-040 Department of Transportation, Highway Access  
Management Access Permits—Administrative Process

## **Management**

### ***Executed by:***

- Assistant Secretary for Environmental & Engineering (ID 01-01, IV.C 36, & 38) with further delegation for certain types of agreements to the State Traffic Engineer, the State Design Engineer, and the Environmental Affairs Manager (3-1-96 Memo); and
- Assistant Secretary for Planning & Programming (ID 01-01, IV.D.6) with further delegation authorized.

### ***Agreement Closure***

### ***Audit of Agreement***

An audit is not required on a reimbursable agreement. However, the other party to the agreement may request that an audit be performed if they feel that something was not done according to the agreement.

### ***Supplementing Agreement***

- Developer Agreement - Construction by Developer at Developer Expense (224-054EF)  
*DeveloperAgreements.fp3*



Washington State  
Department of Transportation

<b>Developer Agreement</b> <b>Construction by Developer</b> <b>At Developer Expense</b>			Developer and Address		
			Section / Location		
Agreement Number		Description of Work			
State Route No.	Control Section No.				Region
Surety Bond					Work Hours

This AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, between the STATE OF WASHINGTON, Department of Transportation, acting by and through the Secretary of Transportation, hereinafter called the "STATE", and the above named organization, hereinafter called the "DEVELOPER".

WHEREAS, the DEVELOPER wishes to construct an intersection and/or related improvements within the STATE's rights-of-way, and

WHEREAS, the STATE and DEVELOPER now wish to define responsibility for construction and maintenance of the proposed improvements.

NOW THEREFORE, by virtue of Title 47.50 RCW, it is mutually agreed between the parties hereto as follows:

1. The STATE agrees to grant the DEVELOPER permission to construct the above described work within STATE right-of-way at the location described in Exhibit "A", attached hereto and by this reference made a part of this AGREEMENT.
2. The DEVELOPER agrees to construct the project as shown on Exhibit "B", at 100 percent DEVELOPER expense and responsibility. Exhibit "B" is attached hereto and by this reference made a part of this AGREEMENT.  
  
The responsibility of the DEVELOPER for performance, safe conduct, and adequate policing and supervision of the project shall not be lessened or otherwise affected by the STATE's approval of plans, specifications, or work, or by the presence at the worksite of the STATE's representative(s), or by compliance by the DEVELOPER with any requests or recommendations made by such representative(s).
3. Any change of work from that shown on Exhibit "B" must be approved by the STATE prior to beginning such work. Plan revisions may be required by the STATE if design standards change between the time of the AGREEMENT approval and the beginning of construction.
4. Upon receipt of this AGREEMENT by the DEVELOPER the STATE may request a construction schedule showing critical dates and activities that will lead to the timely completion of the work required under this AGREEMENT.  
  
Failure by the DEVELOPER to provide the construction schedule within 30 days may cause cancellation of the AGREEMENT. Cancellation of this agreement will not lessen the DEVELOPER'S responsibility to reimburse the STATE for those costs agreed to by item 13.
5. Prior to beginning of construction, a preconstruction conference shall be held with the STATE, DEVELOPER, and the DEVELOPER's contractor.
6. Should the DEVELOPER choose to perform the work outlined herein with other than its own forces, a representative of the DEVELOPER shall be present at all times unless otherwise agreed to by the Region Administrator. All contact between the STATE and DEVELOPER's contractor shall be through the representative of the DEVELOPER. Where the DEVELOPER chooses to perform the work with its own forces, it may elect to appoint one of its own employees engaged in the construction as its representative. Failure to comply with this provision shall be grounds for restricting any further work by the DEVELOPER within STATE right-of-way, until said requirement is met.  
  
The DEVELOPER, at its own expense, shall adequately police and supervise all work on the above described project by itself, its contractor(s), subcontractor(s), agent(s), and others, so as to not endanger or injure any person or property.
7. Work within STATE right-of-way shall be restricted to the above specified hours and no work shall be allowed on the right-of-way Saturdays, Sundays, or Holidays, unless otherwise authorized by the STATE.
8. In the construction and/or maintenance of this facility, the DEVELOPER shall comply with the "Manual on Uniform Traffic Control Devices for Streets and Highways", current edition. Any closures or restrictions of the highway shall require a STATE approved traffic control plan.

9. All material and workmanship shall conform to the Washington State Department of Transportation Standard Specifications for Road, Bridge, and Municipal Construction, current edition, and shall be subject to inspection by the STATE.
10. All disturbed right-of-way shall be seeded, fertilized, mulched, and protected from erosion.
11. The DEVELOPER shall provide an executed surety bond acceptable to the STATE in the amount stated above. the bond shall:
- Be signed by a surety that is registered with the Washington State Insurance Commissioner and appears on the current authorized list published by the Office of the Insurance Commissioner.
- Be conditioned upon faithful performance of the AGREEMENT.
- Guarantee that the surety shall indemnify and defend the STATE against any loss resulting from the DEVELOPER's failure to faithfully perform all the terms under this AGREEMENT.
- Guarantee that the DEVELOPER or the contractor of the DEVELOPER shall pay all laborers, mechanics, subcontractors, and materialmen, or any person who provides supplies or provisions for carrying out the work.
- The surety bond shall remain in full force and effect until released in writing by the STATE.
- The STATE will recover from the DEVELOPER and its sureties such damages as the STATE may sustain by reason of the DEVELOPER's failure to comply with the provisions of this AGREEMENT.
12. The DEVELOPER shall obtain and keep in force for the duration of the work under this AGREEMENT, public liability and property damage insurance with companies or through sources approved by the State Insurance Commissioner pursuant to Title 48 RCW. The STATE shall be specifically named as an insured in a policy with the same company which insures the DEVELOPER or by an endorsement to an existing policy. The amount of coverage shall be not less than a single limit of \$1,000,000 for bodily injury, including death and property damage per occurrence. The DEVELOPER shall furnish the STATE proof of insurance prior to undertaking any work covered by this AGREEMENT.
13. The DEVELOPER shall reimburse the STATE for all actual direct and related indirect costs necessitated by this AGREEMENT. Such costs include, but are not limited to, agreement preparation, plan review, and construction inspection.
- The DEVELOPER agrees to make payment for the work to be done by the STATE within thirty (30) days from receipt of billing from the STATE.
14. The STATE shall have ownership and control of the completed facility within the STATE right-of-way and related traffic signal induction loops outside the STATE's right-of-way, all subject to final acceptance by the STATE with the exception that the DEVELOPER, his assigns, and successors, shall be responsible for the construction and maintenance of the private connections and appurtenances between the shoulder line of the highway and the right-of-way line inclusive of surfacing and drainage, when applicable. Future construction or maintenance within the areas of responsibility by the DEVELOPER, his assigns, and successors which will affect the traffic signal induction loops and related appurtenances shall require STATE review and approval.
15. Any breach of the terms and conditions of this AGREEMENT, or failure on the part of the DEVELOPER to proceed with due diligence and in good faith in the construction and maintenance work provided for herein, shall subject this AGREEMENT to be cancelled and, at the option of the STATE, may require the DEVELOPER to remove all or part of the facilities constructed hereunder at the DEVELOPER's sole expense.
16. The DEVELOPER shall indemnify and hold the STATE, and its agents, employees and/or officers harmless from and shall process and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the STATE, its agents, employees and officers arising out of, in connection with, or incident to the execution of this AGREEMENT and/or the DEVELOPER's performance or failure to perform any aspect of this AGREEMENT. Provided, however, that if such claims are caused by or result from the concurrent negligence of (a) the DEVELOPER and (b) the STATE, its agents, employees and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the DEVELOPER, and provided further, that nothing herein shall require the DEVELOPER to hold harmless or defend the STATE, its agents, employees and/or officers from any claims arising from the sole negligence of the STATE, its agents, employees, and/or officers.
17. In the event that any party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action or proceedings shall be brought in a court of competent jurisdiction situated in Thurston County, Washington.

Payment not made within thirty (30) days after receipt of billings shall bear interest at the rate of one percent per month or fraction thereof until paid pursuant to RCW 43.17.240.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the day and year first above written.

**DEVELOPER**

**STATE OF WASHINGTON  
DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

- Developer Agreement - Construction by State at Developer Expense (224-064EF)  
*DeveloperAgreements.fp3*



Washington State  
Department of Transportation

<b>Developer Agreement</b> Construction by State At Developer Expense			Organization and Address
Agreement Number			Section / Location
State Route No.	Control Section No.	Region	Description of Work
Advance Payment Amount	Surety Bond		

This AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, between the STATE OF WASHINGTON, Department of Transportation, acting by and through the Secretary of Transportation, hereinafter called the "STATE", and the above named organization, hereinafter called the "DEVELOPER".

WHEREAS, the DEVELOPER wishes to construct an intersection and/or improvements within the STATE's right-of-way, and

WHEREAS, the STATE is planning the construction or improvement of a section of state route as shown above, and in connection therewith, the DEVELOPER has requested that the STATE perform certain work as herein described, and

WHEREAS, it is deemed to be in the best interest for the STATE to include the necessary items of work, as requested by the DEVELOPER, in the STATE's construction contract proposed for the improvement of this section of State Highway, and

WHEREAS, the STATE and the DEVELOPER now wish to define responsibility for construction and maintenance of the proposed improvements.

NOW THEREFORE, by virtue of Title 47.50 RCW, it is mutually agreed between the parties hereto as follows:

1. The STATE, as agent acting for and on behalf of the DEVELOPER, agrees to perform the above "Description of Work".

Plans, specifications and cost estimates shall be prepared by the STATE in accordance with the current State of Washington Standard Specifications for Road, Bridge, and Municipal Construction, and adopted design standards, unless otherwise noted. The STATE will incorporate the plans and specifications into the STATE's project and thereafter advertise the resulting project for bid and, assuming bids are received and a contract is awarded, administer the contract.

The DEVELOPER hereby approves the plans and specifications for the described work as shown on Exhibit "B", attached hereto and by this reference made a part of this AGREEMENT.

2. The DEVELOPER may, if it desires, furnish an inspector on the project. Any costs for such inspection will be borne solely by the DEVELOPER. All contact between said inspector and the STATE's contractor shall be through the STATE's representative.
3. The DEVELOPER agrees, upon satisfactory completion of the work involved, to deliver a letter of acceptance which shall include a release and waiver of all future claims or demands of any nature resulting from the performance of the work under this AGREEMENT.

If a letter of acceptance is not received by the STATE within 90 days following completion of the work, the work will be considered accepted by the DEVELOPER and shall release the STATE from all future claims and demands of any nature resulting from the performance of the work under this AGREEMENT.

The DEVELOPER may withhold this acceptance of work by submitting written notification to the STATE within the 90 day period. This notification shall include the reasons for withholding the acceptance.

4. The DEVELOPER, in consideration of the faithful performance of the work to be done by the STATE, agrees to reimburse the STATE for the actual direct and related indirect cost of the work.

An itemized estimate of cost for work to be performed by the STATE at the DEVELOPER's expense is marked Exhibit "A", and is attached hereto and by this reference made a part of this agreement.

Partial payments shall be made by the DEVELOPER, upon request of the STATE, to cover costs incurred. These payments are not to be more frequent than one (1) per month. It is agreed that any such partial payment will not constitute agreement as to the appropriateness of any item and that, at the time of the final audit, all required adjustments will be made and reflected in a final payment.

5. A surety bond in the amount shown above written by a surety company authorized to do business in the state of Washington shall be furnished to the STATE prior to execution by the STATE of this agreement. The bond shall remain in force until written release by the STATE.

The DEVELOPER agrees to make payment for the work to be done by the STATE within thirty (30) days from receipt of billing from the STATE.

Payment not made within thirty (30) days after receipt of billings shall bear interest at the rate of one percent per month or fraction thereof until paid pursuant to RCW 43.17.240.

6. The DEVELOPER agrees to pay the STATE the "Advance Payment Amount" stated above within 20 days after final execution of this AGREEMENT. The advance payment represents approximately fifteen (15) percent of the estimate of cost and covers costs incurred by the STATE in the initial stages of the project. The advance payment will be carried throughout the life of the project with final adjustment made in the final payment.

7. In the event unforeseen conditions require an increase in the cost of 25 percent or more from that agreed to on Exhibit "A", this AGREEMENT will be modified by supplement AGREEMENT covering said increase.

In the event it is determined that any change from the description of work contained in this AGREEMENT is required, approval must be secured from the DEVELOPER prior to the beginning of such work. Where the change is substantial, written approval must be secured.

Reimbursement for increased work and/or a substantial change in the description of work shall be limited to costs covered by a written modification, change order or extra work order approved by the DEVELOPER.

8. The DEVELOPER hereby grants and conveys to the STATE the right of entry upon all land which the DEVELOPER has interest, within or adjacent to the right-of-way of the highway, for the purpose of constructing said improvements.

9. The STATE shall have ownership and control of the completed facility within the STATE right-of-way, and related traffic signal induction loops outside the STATE's right-of-way with the exception that the DEVELOPER, his assigns and successors, shall be responsible for the

construction, reconstruction, and maintenance of the connection and appurtenances between the shoulder line of the highway and the right-of-way line inclusive of surfacing and drainage when applicable. Future construction or maintenance within the areas responsible by the DEVELOPER, his assigns, and successors which will affect the traffic signal induction loops shall require STATE review and approval.

10. Any breach of the terms and conditions of this AGREEMENT, or failure on the part of the DEVELOPER to proceed with due diligence and in good faith in the construction and/or maintenance work provided for herein, shall subject this AGREEMENT to be canceled and, at the option of the STATE, may require the DEVELOPER to remove all or part of the facilities constructed hereunder at the DEVELOPER's sole expense.

11. The DEVELOPER shall indemnify and hold the STATE and its agents, employees and/or officers harmless from and shall process and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the STATE, its agents, employees and officers arising out of, in connection with, or incident to the execution of this AGREEMENT and/or the DEVELOPER's performance or failure to perform any aspect of this AGREEMENT. Provided, however, that if such claims are caused by or result from the concurrent negligence of (a) the DEVELOPER and (b) the STATE, its agents, employees, and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the DEVELOPER, and provided further, that nothing herein shall require the DEVELOPER to hold harmless or defend the STATE, its agents, employees and/or officers from any claims arising from the sole negligence of the STATE, its agents, employees, and/or officers.

12. In the event that any party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action or proceeding shall be brought in a court of competent jurisdiction situated in Thurston County, Washington.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the day and year first above written.

**DEVELOPER**

**STATE OF WASHINGTON  
DEPARTMENT OF TRANSPORTATION**


By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

DOT Form 224-064 EF  
Revised 6/95



- Developer/Local Agency Agreement - Construction by Developer at Developer Expense (224-063EF) *DeveloperAgreements.fp3*



**Washington State  
Department of Transportation**

<b>Developer / Local Agency Agreement</b>  <b>Construction by Developer At Developer Expense</b>			Developer and Address	
			Local Agency and Address	
Agreement Number			Section / Location	
State Route No.	Control Section No.	Region	Description of Work	
Surety Bond		Work Hours		

This AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between the STATE OF WASHINGTON, Department of Transportation, acting by and through the Secretary of Transportation, hereinafter called the "STATE", the above named organization, hereinafter called the "DEVELOPER" and the above named City or County, hereinafter called the "LOCAL AGENCY".

WHEREAS, the DEVELOPER wishes to construct an intersection and/or related improvements within the STATE's rights-of-way, and

WHEREAS, the STATE, LOCAL AGENCY, and DEVELOPER now wish to define responsibility for construction and maintenance of the proposed improvements.

NOW THEREFORE, by virtue of Title 47.50 RCW and Title 47.24 RCW it is mutually agreed between the parties hereto as follows:

- The STATE agrees to grant the DEVELOPER permission to construct the above described work within STATE right-of-way at the location described in Exhibit "A", attached hereto and by this reference made a part of this AGREEMENT.
- The DEVELOPER agrees to construct the project as shown on Exhibit "B", at 100 percent DEVELOPER expense and responsibility. Exhibit "B" is attached hereto and by this reference made a part of this AGREEMENT.  
The responsibility of the DEVELOPER for performance, safe conduct, and adequate policing and supervision of the project shall not be lessened or otherwise affected by the STATE's approval of plans, specifications, or work, or by the presence at the worksite of the STATE's representative(s), or by compliance by the DEVELOPER with any requests or recommendations made by such representative(s).
- Any change of work from that shown on Exhibit "B" must be approved by the STATE prior to beginning such work. Plan revisions may be required by the STATE if design standards change between the time of the AGREEMENT approval and the beginning of construction.
- Upon receipt of this AGREEMENT by the DEVELOPER the STATE may request a construction schedule showing critical dates and activities that will lead to the timely completion of the work required under this AGREEMENT.  
Failure by the DEVELOPER to provide the construction schedule within 30 days may cause cancellation of the AGREEMENT. Cancellation of this agreement will not lessen the DEVELOPER'S responsibility to reimburse the STATE for those costs agreed to by item 13.
- Prior to beginning of construction, a preconstruction conference shall be held with the STATE, LOCAL AGENCY, DEVELOPER, and the DEVELOPER's contractor.
- Should the DEVELOPER choose to perform the work outlined herein with other than its own forces, a representative of the DEVELOPER shall be present at all times unless otherwise agreed to by the Region Administrator. All contact between the STATE and DEVELOPER's contractor shall be through the representative of the DEVELOPER. Where the DEVELOPER chooses to perform the work with its own forces, it may elect to appoint one of its own employees engaged in the construction as representative. Failure to comply with this provision shall be grounds for restricting any further work by the DEVELOPER within STATE right-of-way until said requirement is met.  
The DEVELOPER, at its own expense, shall adequately police and supervise all work on the above described project by itself, its contractor(s), subcontractor(s), agent(s), and others, so as to not endanger or injure any person or property.
- Work within STATE right-of-way shall be restricted to the above specified hours and no work shall be allowed on the right-of-way Saturdays, Sundays or Holidays, unless otherwise authorized by the STATE.
- In the construction and/or maintenance of this facility, the DEVELOPER shall comply with the "Manual on Uniform Traffic Control Devices for Streets and Highways", current edition. Any closures or restrictions of the highway shall require a STATE approved traffic control plan.
- All material and workmanship shall conform to the Washington State Department of Transportation Standard Specifications for Road, Bridge, and Municipal Construction, current edition, and shall be subject to inspection by the STATE.
- All disturbed right-of-way shall be seeded, fertilized, mulched, and protected from erosion.
- The DEVELOPER shall provide an executed surety bond acceptable to the STATE in the amount stated above. The bond shall:

Be signed by a surety that is registered with the Washington State Insurance Commissioner and appears on the current authorized list published by the Office of the Insurance Commissioner.

Be conditioned upon faithful performance of the AGREEMENT.

Guarantee that the surety shall indemnify and defend the STATE against any loss resulting from the DEVELOPER's failure to faithfully perform all the terms under this AGREEMENT.

Guarantee that the DEVELOPER or the contractor of the DEVELOPER shall pay all laborers, mechanics, subcontractors, and materialmen, or any person who provides supplies or provisions for carrying out the work.

The surety bond shall remain in full force and effect until released in writing by the STATE.

The STATE will recover from the DEVELOPER and its sureties such damages as the STATE may sustain by reason of the DEVELOPER's failure to comply with the provisions of this AGREEMENT.

12. The DEVELOPER shall obtain and keep in force for the duration of the work under this AGREEMENT, public liability and property damage insurance with companies or through sources approved by the State Insurance Commissioner pursuant to Title 48 RCW. The STATE and LOCAL AGENCY shall be specifically named as an insured in a policy with the same company which insures the DEVELOPER or by an endorsement to an existing policy. The amount of coverage shall be not less than a single limit of \$1,000,000 for bodily injury, including death and property damage per occurrence. The DEVELOPER shall furnish the STATE proof of insurance prior to undertaking any work covered by this AGREEMENT.

13. The DEVELOPER shall reimburse the STATE for all actual direct and related indirect costs necessitated by this AGREEMENT. Such costs include, but are not limited to, agreement preparation, plan review, and construction inspection.

The DEVELOPER agrees to make payment for the work to be done by the STATE within thirty (30) days from receipt of billing from the STATE.

Payment not made within thirty (30) days after receipt of billings shall bear interest at the rate of one percent per month or fraction thereof until paid pursuant to RCW 43.17.240.

14. The STATE shall have ownership and control of the completed facility within the STATE right-of-way and related traffic signal induction loops outside the STATE's right-of-way, all subject to final acceptance by the STATE with the exception that the DEVELOPER, his assigns, and successors, shall be responsible for the construction

and maintenance of the private connections and appurtenances between the shoulder line of the highway and the right-of-way line inclusive of surfacing and drainage, when applicable. Future construction or maintenance within the areas of responsibility by the DEVELOPER, his assigns, and successors which will affect the traffic signal induction loops, and related appurtenances shall require STATE review and approval. The LOCAL AGENCY shall be responsible for continued ownership and maintenance of the completed facility outside of STATE right-of-way within right-of-way that the LOCAL AGENCY has interest.

15. The LOCAL AGENCY, if applicable, hereby grants and conveys to the STATE the right of entry upon all land which the LOCAL AGENCY has interest, within or adjacent to the right-of-way of the highway, for the purpose of maintaining and if necessary, reconstructing said traffic signal induction loops, and related appurtenances.
16. Any breach of the terms and conditions of this AGREEMENT, or failure or the part of the DEVELOPER to proceed with due diligence and in good faith in the construction and maintenance work provided for herein, shall subject this AGREEMENT to be canceled and, at the option of the STATE may require the DEVELOPER to remove all or part of the facilities constructed hereunder at the DEVELOPER's sole expense.

17. The DEVELOPER shall indemnify and hold the STATE and LOCAL AGENCY, and their agents, employees and/or officers harmless from and shall process and defend at its own expense any and all claims, demands suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the STATE and/or LOCAL AGENCY and/or their agents, employees and officers arising out of, in connection with, or incident to the execution of this AGREEMENT and/or the DEVELOPER's performance or failure to perform any aspect of this AGREEMENT. Provided, however, that if such claims are caused by or result from the concurrent negligence of (a) the DEVELOPER and (b) the STATE and/or LOCAL AGENCY, and/or their agents, employees and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the DEVELOPER, and provided further, that nothing herein shall require the DEVELOPER to hold harmless or defend the STATE and/or LOCAL AGENCY, and/or their agents, employees and/or officers from any claims arising from the sole negligence of the STATE and/or LOCAL AGENCY, and/or their agents, employees, and/or officers.

18. In the event that any party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action or proceedings shall be brought in a court of competent jurisdiction situated in Thurston County, Washington.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the day and year first above written.

#### DEVELOPER

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

#### LOCAL AGENCY

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

DOT Form 224-063 EF  
Revised 6/95

#### STATE OF WASHINGTON DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

### 3.15 UT - Utility Agreement

#### **Description**

A Utility Agreement is a legal document that defines the financial and performance responsibilities between a utility company and WSDOT as a result of a state construction project in which utility relocation and/or construction is required or requested.

#### **When Used**

A Utility Agreement is used when a utility facility requires relocation due to a state construction project and WSDOT is financially responsible for the cost of relocation or the utility wishes to include the relocation or construction of its facilities in a WSDOT project.

#### **Why Used**

A Utility Agreement is entered into either because the utility has a demonstrated compensable property right or it has requested inclusion of the relocation or construction of its facilities in a WSDOT contract. A demonstrated compensable property right is either:

- The utility has an easement for the facility requiring relocation;
- The utility has ownership of the property on which the facility resides; or
- The utility has a prescriptive right for the facility requiring relocation.

#### **Agreement Check List**

For process and procedures of a UT Agreement, refer to the *Utilities Manual* (M22-87).

#### **Standard Form Agreement:**

The following standard agreement forms are available as a FileMaker Pro file (UtilityAgreements.fp3):

*Utility Construction Agreement - Work by Utility - Actual Cost (224-053EF),*

*Utility Construction Agreement - Work by Utility - Lump Sum (224-061EF);*

*Utility Construction Agreement - Work by State - Actual Cost (224-062EF);*

*Utility Preliminary Engineering Agreement - Work by Utility (224-073EF; and*

*Statewide Utility Facilities Installation - Work by State - Actual Cost (224-074EF).*

The standard form agreements have been approved as to form by the state Attorney General's Office. This approval applies as long as there are no changes made to the body of the agreement. Once there has been a change to the standard form, the agreement becomes a nonstandard agreement and requires review and concurrence by the OSC Utilities Section, Contracts Unit, and approval as to form by the state Attorney General's Office.

## **Support Documentation**

### ***References***

References are listed in the *Utilities Manual*.

## **Management**

### ***Executed by:***

Assistant Secretary for Environmental & Engineering (ID 01-01, IV.C.5) with further delegation to the State Design Engineer (3-1-96 Memo)

### ***Agreement Closure***

For process and procedures for a UT Agreement, refer to the *Utilities Manual*.

### ***Audit of Agreement***

An audit is triggered automatically for agreements over a certain dollar amount or it can be requested for any agreement by any state agent involved with the agreement.

### ***Supplementing Agreement***

For process and procedures for a UT Agreement, refer to the *Utilities Manual*.

## 3.16 0P - Rental of Building and Land

### Description

An 0P Agreement is an agreement for rental of land, sundry sites, or buildings where WSDOT is the tenant. Office and warehouse space agreements are handled by WSDOT Office Services which coordinates with the Department of General Administration (GA). Other land and building agreements are handled by WSDOT Real Estate Services.

### When Used

These agreements are entered into when WSDOT needs to rent or lease land or buildings. Initial contacts should be made at the regional Real Estate Services office.

### Agreement Check List

The process for this agreement type is covered in Chapter 6 of the *Purchasing Manual* (M 72-80).

### Standard Form Agreement

This type of agreement does not have a standard agreement form. The agreements are written and executed through General Administration (GA).

### Support Documentation

#### References

- M 72-80 *Purchasing Manual*
- RCW 43.82.010 “Acquisition, lease, and disposal of real estate for state agencies—Long-range planning—Use of lease as collateral or security—Colocation and consolidation—Studies—Delegation of functions—Exemptions”

### Management

#### Executed by:

- Assistant Secretary for Finance & Administration (ID 01-01, A.5) with further delegation authorized;
- General Administration Division of Property Development; and
- Director of Real Estate Services.

### Audit of Agreement

An audit is required for payable agreements greater than \$100,000. However, an audit may be requested at any time.

### Supplementing Agreement

For lease renewal or modification, see the *Purchasing Manual*, Chapter 6-5.



### 3.17 0Y - Personal Services (Consultant) Agreement

#### **Description**

A Personal Services or Consultant agreement is used when an independent individual or firm has contracted with WSDOT to perform a service or render an opinion or recommendation.

Generally these services are solicited by issuing a request for proposal (RFP) to service providers. A firm is then selected from those providers who submit an RFP. A typical selection is based on interviews of firms from a short list of the most qualified respondents. A contract is then negotiated with the firm to cover the scope work, level of effort, and costs.

The rules for personal service contracts are set by RCWs and the Office of Financial Management (OFM). There are different categories of personal services contracts that have different requirements relating to acquisition, approval, and OFM reporting. For information on personal services contracts, contact the Consultant Services Office or the *Consultant Services Procedures Manual*.

#### **When Used**

The following are three categories that have specialized requirements.

##### *Architectural and Engineering Services*

This type of agreement is used when hiring the services of a professional architect or engineer. The contact for information is the Consultant Services Office.

##### *Expert Witness Contracts*

These are contracts by the Attorney General's Office to acquire services of expert witnesses.

##### *Information Technology (IT) Services*

Services in the area of information technology are acquired through Management Information Services.

#### **Agreement Check List**

For process and procedures for an 0Y agreement, refer to the *Consultant Services Procedures Manual*.

#### **Standard Agreement Form**

Agreements need to cover a variety of areas to define the roles of the parties to the agreement. The language spells out the relationship between the parties to the agreement. The agreement states the purpose of having the agreement, defines the ground rules under which the parties will interact, and sets out the obligations of the parties to each other. Listed below are some of the general sections that can be found in an agreement and their purpose in the agreement. The names may change in various agreements but these areas cover the things that need to be defined when an agreement is written.

## **Support Documentation**

### ***References***

- 23 CFR “Highways, Approved Alternate Procedures”
- 23 CFR 172 “Administration of Engineering and Design Related Service Contracts”
- 48 CFR “Federal Acquisition Regulation System (FARS)”
- RCW 39.29 “Public Contracts and Indebtedness, Personal Service Contracts”
- RCW 39.80 “Public Contracts and Indebtedness, Contracts for Architectural and Engineering Services”
- M 27-50 *Consultant Services Procedures Manual*

## **Management**

### ***Executed By:***

- Assistant Secretary for Finance & Administration (ID 01-01, IV.A.4) with further delegation authorized;
- Assistant Secretary for Environmental & Engineering (ID 01-01, IV.C.14). Further delegation is not authorized;
- Chief Counsel (ID 01-01, IV.I.1) with further delegation authorized;
- Personnel Manager (ID 01-01, IV.J.1) with further delegation authorized; and
- Director, Audit Office (ID 01-01, IV.K.2) with further delegation authorized

### ***Agreement Closure***

For the closure process and procedures for an OY agreement, refer to the *Consultant Services Procedures Manual*.

### ***Audit of Agreement***

For audit requirements for an OY agreement, refer to the *Consultant Services Procedures Manual*.

### ***Supplementing Agreement***

For processing of a supplement to an OY agreement, refer to the *Consultant Services Procedures Manual*.



## 4. Questions and Answers



## **5. Region and Division Information**

- 5.1 Eastern Region**
- 5.2 North Central Region**
- 5.3 Northwest Region**
- 5.4 Olympic Region**
- 5.5 South Central Region**
- 5.6 South West Region**
- 5.7 Aviation Division**
- 5.8 Environmental and Engineering**
- 5.9 Field Operations**
- 5.10 Highways and Local Roadways**
- 5.11 Planning and Programming**
- 5.12 Public Transportation and Rail**
- 5.13 Highways and Local Programs**
- 5.14 Transportation Economic Partnership**
- 5.15 Washington State Ferries**



## 6. Appendix

### 6.1 OSC Processed Agreement Transmittal Check List

- OSC Processed Agreement Transmittal Check List - *Agmttran.fp*


Olympia Service Center Processed Agreement Transmittal Checklist			
<b>Project Identification (PIN No. ) if Applicable</b>			
1. Agreement No.	Supplement No.	SR No.	CS No.
2. Section			
3. Work Order or Contract No.			
Project Identification (PIN No. ) if Applicable			
4. Advertisement & Award By:	OSC <input type="checkbox"/>	Region <input type="checkbox"/>	N/A <input type="checkbox"/> AD Date
5. SR Milepost Range of Work	FROM	TO	
6. Yes <input type="checkbox"/> No <input type="checkbox"/>	Rush ( Standard Processing Unless Justified) Justification For Rush		
7. Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>	State Funding Involved Highway Program Category IF YES: I <input type="checkbox"/> P <input type="checkbox"/> M2 <input type="checkbox"/> OTHER		
8. Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>	Federal Funds Involved If Yes: Federal Aid No.		
9. Yes <input type="checkbox"/> No <input type="checkbox"/>	Agreement Edit Information (AEI) Form Attached Federal Employees Identification No.		
10. Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>	Indirect Cost Rate (Administrative Overhead) Included If No - Reason		
11. Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>	Statement Recognizing Pro-ration Of Mobilization, Engineering Added To Cost Estimate (if Appropriate)		
12. Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>	Change Order Attached If Work Is Under State Contract If Yes: Change Order No.		
13. Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>	Advance Payment Amount Included For State Work If No - Reason		
14. Other Comments Or Additional Information			

Red December 2,

Figure 1

## 6.2 Agreement Edit Information

- Agreement Edit Information (130-005EF) *AgreementEditInformationDistribution.fp3*

 <b>Washington State Department of Transportation</b>		<b>Agreement Edit Information</b>	
Return this form and executed agreement to Comptroller's Office – General Accounting			
AGENCY	LOCAL AGENCY NUMBER IF APPLICABLE	<b>AGREEMENT NUMBER</b>	SUPPLEMENT NO.
CONTRACTOR NAME AND ADDRESS		AGREEMENT MANAGER	REGION
		ORG. CODE	ALL REPORTS WILL BE SENT TO THIS ORG. NO.
		START DATE	VOUCHERS WILL NOT BE PAID FOR WORK PERFORMED BEFORE THIS DATE.
FEDERAL EMP. ID NO. <b>OR</b> SOC. SECURITY NO.	END DATE	VOUCHERS WILL NOT BE PAID FOR WORK PERFORMED AFTER THIS DATE.	
PROJECT TITLE			
PROJECT DESCRIPTION			
<b>AN IRS 1099 MUST BE PREPARED BY THE FOLLOWING DEPARTMENT FOR THE FOLLOWING SERVICES</b>  All fees, commissions, or any other compensation paid to (or on behalf of) any self employed individual. Business or individual paid royalties or rents. Physicians or corporations for medical or health services.		<b>VOUCHERS WILL NOT BE PAID IF THE TOTAL AMOUNT ACCUMULATED FOR THIS AGREEMENT EXCEEDS THE AGREEMENT AMOUNT PLUS THE OVERRUN PERCENT.</b>	
THIS AGREEMENT REQUIRES AN IRS 1099 FORM  YES <input type="checkbox"/> NO <input type="checkbox"/>		REIMBURSEABLE EST. AMOUNT	MAXIMUM PAYABLE AMOUNT
		ALLOWED OVERRUN PERCENT %	ALLOWED OVERRUN PERCENT %
WORK ORDER	PROGRAM	APPROPRIATION	PREPARER'S SIGNATURE
FEDERAL AID PROJECT NO.		DATE	PHONE

DOT Form 130-005 EF  
Revised 6/94

**Figure 2**

### **6.3 Filling out the Agreement Edit Information (AEI) form**

The Agreement Information Edit (AEI or Pink) form should be transmitted to OSC either as part of the initial review package for approval or with the regionally executed agreement when it is sent to OSC Accounting for processing . The following is information on filling out the AEI form.

#### ***Agency***

The name of the agency with which the agreement made.

#### ***Local Agency Number***

Include the local agency number, If known.

#### ***Agreement and Supplement Number***

Fill in the agreement number and supplement number.

#### ***Contractor Name and Address***

The name of the agency, address, and contact (if available).

#### ***Agreement Manager***

Depending on how each region delegates agreement responsibility, this will be whoever is responsible for the construction contract. It could be anyone from the Program Manager to the Construction Project Engineer.

#### ***Region***

Either choose the correct region from the pull-down menu on the FileMaker Pro file or fill in your region.

#### ***Organization (Org) Code***

This should be the agreement manager's organization (org) code.

#### ***Start Date***

The start date can either be the execution date of the agreement, the anticipated date of the beginning of the project, or some other date that will coincide with the beginning of work to be billed. Work done prior to this date or the date of execution will not be billed or paid.

#### ***End Date***

This is the last date that work being done under the agreement can be billed. Any work performed after this date will not be billed or paid.

#### ***Federal ID or Social Security Number***

A list of identification numbers for each of the agencies that your region has dealings with should be part of your region's Section in Chapter 5 of this manual. Your regional Accounting Section can provide these numbers or explain how to obtain them from the WSDOT Mainframe.

***Project Title***

SR number and section of highway, usually as shown on the plan documents, for example, SR 405 - 160<sup>th</sup> Interchange or SR 9 - Getchell Rd Intersection.

***Project Description***

Give a brief description of the work being done under the agreement, for example, reconstruct interchange or Intersection improvements and signal installation.

***Reimbursable Amount and Allowed Overrun Percent***

Include the estimated amount of the agreement to be paid to WSDOT for work being done under the agreement. This should not include the 15 percent advance pay amount or any overrun percentage amounts.

The overrun percentage, if any, should be entered as a percent figure.

***Maximum Payable Amount and Allowed Overrun Percent***

Include the estimated amount of the agreement to be paid to the local agency for work being done under the agreement. This should not include the overrun amount.

The overrun percentage, if any, should be entered as a percent figure.

***IRS 1099 Form Required***

***Work Order Number, Program, Appropriation, Object Account***

Fill out all pertinent information regarding the work order, if known.

***Federal Aid Project Number***

Include the federal aid project number, if known.

***Preparer's Signature, Date & Phone***

Sign and date the agreement, and provide the preparer's phone number.



## 6.4 Exhibit A

### EXHIBIT A Summary of Quantities

Item	Unit	Quantity	Cost	Total
Mobilization	LS	LS	\$ 2,755.00	\$ 2,755.00
Grading	CY	25	12.00	300.00
Drainage	LF	250	45.00	11,250.00
Surfacing	SY	250	15.00	3,750.00
Paving	TON	50	45.00	2,250.00
Traffic	HR	200	50.00	10,000.00

**Subtotal = 30,305.00**

Sales Tax at 8.2 % on subtotal = 2,485.01

**Subtotal = 32,790.01**

Construction Engineering at 18 % on taxed amount = 5,902.20 \*

**Subtotal = 38,692.21**

Indirect cost at 8.09% = 3,130.20 \*\*

**TOTAL COST = 41,822.41**

#### Notes:

- \* Mobilization and construction engineering costs will be determined by a pro-ration of the mobilization and engineering costs of the entire project to the construction costs of the work covered by this agreement.
- \*\* The indirect cost will be applied at the actual rate in effect at the time the work is performed.

**Sales Tax** - Sales tax is based on current tax tables.

**Construction Engineering** - Construction engineering (CE) is based on a historic cost of similar project types. (See the Plans Preparation Guide.) Use the % from the engineers estimate if it is part of a WSDOT contract. Remember, this is an estimate of costs

**Indirect Cost** - No indirect cost will be shown if an Overhead (OH) Agreement is in effect.

**Advance Pay Amount** - Shown on the standard agreement form, the Advance Pay Amount is 15% of the TOTAL amount. If TOTAL agreement estimate is < \$5,000, put the total amount of the agreement in this space.

**Overrun Amount** - This amount is based on the TOTAL agreement estimate.

The Advance Payment of 15% and the Overrun Amount of 25% need to be brought to the local agency's attention when the original agreements are sent to them for signature. Put these amounts into the transmittal letter. These additional percentages can affect what the local agency could ultimately be required to pay.

Agreement Amount ( <b>TOTAL</b> )	\$ 41,822.41
Advance Payment @ 15% =	6,273.36
Overrun Percent @ 25% =	10,455.60
<b>The local agency is responsible for this amount ==&gt;</b>	<b>\$ 58,551.37</b>

### ***Estimate of Costs***

Depending on the type or phase of work being done under the agreement, the amount of detail in the Estimate of Costs will vary. For preliminary engineering and the design phase, the estimate will include tasks and labor to show costs.

The right of way phase will require a list of parcels, a true cost or determination of value, and the costs for appraisal and negotiation.

The construction phase should use the item, cost, quantity, total cost format. See below for additives such as construction engineering, sales tax, etc.

There should also be a separate group(s) set up on the summary of quantity sheets for the work being done under each agreement. Work with your Plan Review Section if you have any questions regarding format.

### ***Construction Engineering***

The construction engineering percentage is added to construction projects to provide funds required to do the inspection, testing, and administration of the work being done under the agreement. See estimate example.

The *Plans Preparation Manual*, *EBASE Users Manual*, shows the current percentages being used to estimate engineering costs. The estimates are based on what it has cost historically to administer each type of project and each project will be different.

Construction engineering will be billed as a percentage based on the ratio of the engineering costs of the entire project to the total construction costs of the project.

### ***Sales Tax***

Sales tax is added to the cost of the construction items based on the tax rate for the area where the work is being performed. In some cases there may not be any sales tax applied (for example, work being done for a city).

The latest Washington State Sales Tax Table is available on the World Wide Web at <http://www.wa.gov/dor/wadorfrm.htm#sale>.

### ***Indirect Cost***

If there is no Overhead/Reciprocal Agreement (OH) between the department and

the local agency with which we are entering into any agreement, an additional amount needs to be added to the agreement as a percentage of the agreement amount. See estimate example.

### ***Advance Pay***

Criteria for collection of advance payments is established by instructional letter, Publication Number IL 4017.00, "Collection of Advance Payments on Reimbursable Agreements With Local Governments," dated March 31, 1999.

The 15 percent advance pay amount is based on the total estimated agreement amount (including all additives) and is in addition to that amount. The advance pay amount is billed at the first invoice and is returned to the local agency at the time of final billing with any adjustments for amounts unpaid or not billed.

While communicating with the local agency, be sure that they fully understand that the advance pay amount is in addition to the estimated agreement amount. This will help them with budgeting and presentations to councils/commissions for approval.

### ***Overrun Clause***

Normally the overrun percentage is 25 percent of the estimated agreement amount. It is in the agreement to allow for fluctuations of costs due to higher bids and to provide the ability to increase the agreement amount through the approval of minor additions and changes to the work without having to supplement the agreement each time. However, this does not relieve the department or local agency of the need to supplement the agreement for major changes such as scope creep or an exceedingly high bid.

The local agency needs to be informed, during the time of negotiation, that the estimate is just that, an estimate, and when they budget and/or present the agreement to the council/commission, the estimated cost of the agreement needs to include the 25 percent.



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